SUPREME COURT, U.S.
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No. 1049

IN THE

Supreme Court of the United States

NORMAN F. DACEY, ET AL,
Appellants

vs.

GRIEVANCE COMMITTEE OF THE BAR OF FAIRFIELD COUNTY,
Appellee

On Appeal From The Supreme Court Of The State Of Connecticut.

JURISDICTIONAL STATEMENT.

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IN THE

Supreme Court of the United States

October Term, 1966

No. .....

NORMAN F. DACEY, ET AL

Appellants

vs.

GRIEVANCE COMMITTEE OF THE BAR OF OF FAIRFIELD COUNTY,

Appellee

On Appeal From The Supreme Court Of The State Of Connecticut.

I.

JURISDICTIONAL STATEMENT

Appellants appeal from the final judgment of the Supreme Court of the State of Connecticut announced and entered on August 2, 1966 and from the final judgment denying appellants' motion to reargue, entered on September 21, 1966. Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that substantial Federal questions are presented.

II.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Connecticut is reported in 154 Conn. 129, 222 A.2d. 339. A copy of the opinion is attached hereto as Appendix A. The memorandum of decision of the Superior Court of the State of Connecticut, Fairfield County, is not reported. A copy of the opinion is set forth in Appendix B. The memorandum of decision of the Superior Court of the State of Connecticut, Fairfield County, on Appellants' Motion to Dissolve the Temporary Injunction, is not reported. A copy of the opinion is set forth in Appendix C.

III.

JURISDICTION

This proceeding in equity was brought pursuant to Section 51-88 of the General Statutes of Connecticut, Revision 1958, to enjoin and restrain the appellants from engaging in the alleged unauthorized practice of law.

The judgment of the Supreme Court of the State of Connecticut was announced and entered on August 2, 1966. Appellants' Motion to Reargue was filed on August 15, 1966 and the order of the Supreme Court of the State of Connecticut denying Appellants' Motion to Reargue was entered on September 21, 1966.

The Notice of Appeal was served and was filed in

the Supreme Court of the State of Connecticut, for Fairfield County, at Bridgeport, on December 15, 1966.

The jurisdiction of the Supreme Court of the United States to review this judgment on direct appeal is conferred by Title 28, United States Code, Section 1257 (2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: **Winter v. New York**, 333 U.S. 507; **Butler v. Michigan**, 352 U.S. 380; **Robinson v. California**, 370 U.S. 660. If the second question presented were the sole question sought to be reviewed it would properly be the subject of a petition for certiorari, conferred by Title 28, United States Code, Section 1257 (3). Under the circumstances of this case, jurisdiction to review the latter question on direct appeal is sustained by **Flourney v. Winer**, 321 U.S. 253, 263; **Prudential Insurance Co. v. Check**, 259 U.S. 530, 547.

IV.

QUESTIONS PRESENTED

1. Whether Section 51-88 of the General Statutes of Connecticut, Revision 1958, purporting to prohibit the unauthorized practice of law by persons not admitted to practice law in the State of Connecticut, is so vague and ambiguous as to deprive appellants of life, liberty or property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States in that

it fails to apprise a defendant in advance of what conduct is proscribed thereunder.

2. Whether the scope of the injunction decreed by the Superior Court of the State of Connecticut, Fairfield County, and affirmed by the Supreme Court of the State of Connecticut, which enjoins the appellants, **inter alia**, from arranging and supervising the execution of wills, trusts and similar documents, and advertising and/or soliciting persons to consult them concerning the preparation and/or execution of said documents, etc. is so broad and vague as to unduly restrict the appellants' right of free speech guaranteed them under the First and Fourteenth Amendments to the Constitution of the United States.

V.

STATUTES INVOLVED

1. The statute involved is Section 51-88 of the General Statutes of Connecticut, Revision 1958, (Vol. IX, pp. 35-36) set out in Appendix E.

2. The provisions of the Constitution of the United States which are relied upon are portions of the First, Fifth, and Fourteenth Amendments set out in Appendix F.

VI.

STATEMENT

A. FACTS:

The Appellant Norman F. Dacey is president and treasurer of the corporate appellant Norman F. Dacey and Associates, Incorporated.[1] The appellants are professional estate planners. The individual appellant has written over 100 books and articles on various aspects of estate planning, has lectured at a number of universities on the subject of estate planning and has conducted estate planning forums in numerous cities throughout the country in person and on national radio and television networks.

As estate planners, appellants review a client's life insurance to determine whether it is suitable and adequate and make recommendations regarding purchasing additional insurance when called for. They do not, however, sell any insurance. They also examine a person's financial background and make recommendations and give assistance in the productive and efficient investment of money. In this regard appellants do engage in the sale of shares of mutual funds including, among others, Wellington Fund.

Several years ago the appellant devised a special form of estate plan which has come to be known as a "Dacey Trust." This involves the use of a form

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[1]There is no distinction between the acts of the individual appellant and the corporate appellant and, for convenience, only the individual appellant will be hereinafter referred to.

will which incorporates by reference a revocable, **inter vivos** trust. The corpus of the trust is initially life insurance policies. The form will and trust were originally approved by eminent Connecticut counsel other than present appellant's counsel.

If discussions with a client regarding his financial background and objectives reveal that the assets are sufficient to warrant the creation of a trust, they are provided with a booklet entitled "A Modern Plan For Your Tomorrows."[2] This booklet contains an explanation of the Dacey Trust and also contains copies of a will form and trust form. The booklet also contains general information regarding the marital deduction and other tax savings flowing from the use of an **inter vivos** trust. In some instances the appellant orally supplemented the information in the booklet by explaining, in general terms, the purpose of the marital deduction and of the **inter vivos** trust. If a client, after examining the material supplied him by appellant, decided that he desired the trust arrangement, appellant supplied the will form and trust form. Appellant then prepared the instruments by filling in the blank spaces and supervised the mechanical execution of the documents in his capacity as a notary public.

In essence, the Dacey Trust is a dry trust, being composed of life insurance policies. Upon the settlor's death the bulk of the proceeds of the life in-

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[2]This booklet is marked Defendants' Exhibit #1 and was introduced in the trial of this action before the Superior Court. A copy of the exhibit has been forwarded to the Supreme Court of the United States.

surance are invested in shares of a mutual fund, usually Wellington Fund. If possible, these shares are purchased from the dealer through whom the settlor purchased mutual fund shares during his lifetime, in this instance, the appellant.

Appellants have prepared between 65 and 70 wills or trust forms over a span of 13 or 14 years. In each instance, the documents were prepared for persons who had already previously purchased shares of mutual funds through appellants' facilities.

The appellee, Grievance Committee of the Bar of Fairfield County, Connecticut, brought this action to the Superior Court of the State of Connecticut, Fairfield County, seeking an injunction to restrain appellants from the alleged illegal practice of law. The court (Klau, J.) issued an **ex parte** injunction, the substance of which is set forth in Appendix D, pp. 44a-45a. The action was later tried to the court (Thim, J.) and judgment was entered for the appellee herein. (Judgment of the Superior Court, Appendix D, pp. 45a-46a). Appellants appealed to the Connecticut Supreme Court which affirmed the judgment of the Superior Court.

B. PRESENTATION OF THE FEDERAL QUESTION:

The federal constitutional questions presented on this appeal were first raised at the trial of this action in the Superior Court and were argued in Appellants' Brief filed at the conclusion of the presentation of evidence.

They were pursued on appeal to the Supreme Court of the State of Connecticut in the Request for Finding, filed April 6, 1965, as follows:

> "The appellants in the above entitled case respectfully request a finding of facts for an appeal to the Supreme Court of Errors and submit the draft finding hereto annexed.
> "The questions of law which they desire to have reviewed are:
>
> * * *
>
> "7. Did the Court err in failing to conclude that Section 51-88 of the General Statutes of Connecticut violates Article 1, Section 9 of the Constitution of Connecticut and the Fifth and Fourteenth Amendments to the United States Constitution, and is unconstitutional and void?
>
> * * *
>
> "9. Does the scope of the injunction violate Article 1, Section 5 of the Constitution of Connecticut and the First and Fourteenth Amendments to the United States Constitution."[3]

The Superior Court (trial court) of the State of Connecticut in its finding, ruled as follows:

> "The defendants made the following claims of law respecting the judgment to be rendered, upon which the Court ruled as hereinafter stated:
>
> * * *

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[3]Record on Appeal before the Supreme Court of the State of Connecticut (hereinafter referred to as Record), pp. 11-12.

"179. The scope of the injunction violates the defendants' right of free speech guaranteed them by Article 1, Section 5 of the Constitution of Connecticut and the First and Fourteenth Amendments to the Constitution of the United States.

"180. Section 51-88 of the General Statutes of Connecticut violates Article I, Section 9 of the Connecticut Constitution and the Fifth and Fourteenth Amendments to the United States Constitution and is unconstitutional.

"Notwithstanding said claims, the Court rendered judgment as on file."[4]

Appellants again raised the foregoing federal questions in their Assignments of Errors before the Supreme Court of Connecticut as follows:

"The [trial] Court erred:

* * *

"16. In over-ruling the claims of law stated in paragraphs 174 to 180, inclusive of the finding."[5]

The Supreme Court of Connecticut considered both federal questions on the merits. With respect to the claim that Section 51-88 of the General Statutes was unconstitutionally vague, the Court said:

"The first claim is that Section 51-88 of the General Statutes is unconstitutional because of vagueness, under the rule of such cases as Lan-

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[4]Record, pp. 46-47.

[5]Record, pp. 47, 49.

zetta v. New Jersey, 306 U.S. 451, 453, 59 S. Ct. 618, 83 L.Ed. 888." (154 Conn. at 145; Appendix A, p. 15a)

* * *

The Supreme Court of Connecticut, after discussing the merits of the claim, concluded:

> "His three basic activities which are adversely affected by the statute, are, and always have been, commonly understood to be the practice of law. The claim of unconstitutionality for vagueness is, as to this defendant, without merit." (154 Conn. at 148; Appendix A, p. 19a)

With regard to the second federal question raised by this appeal, the Supreme Court of Connecticut said:

> "A further claim of unconstitutionality is that the defendant's right of free speech, accorded under the first amendment to the federal constitution, has been illegally abridged in the scope and breadth of the terms of the injunction granted against him in this case." (154 Conn. at 148; Appendix A, p. 19a).

After briefly discussing the scope of the injunction the Supreme Court concluded that:

> "This is a very limited injunction and in no way deprives the defendant of any rights, whether constitutionally protected or not, to which he could reasonably claim to be entitled." (154 Conn. at 148; Appendix A, p. 19a).

VII

THE QUESTIONS ARE SUBSTANTIAL

A. SECTION 51-88 OF THE GENERAL STATUTES OF CONNECTICUT VIOLATES THE "DUE PROCESS" CLAUSE OF THE FOURTEENTH AMENDMENT.

The appellant does not dispute the fact that the State of Connecticut has the right to prescribe qualifications of those who wish to practice law within the state, **In re Summers,** 325 U.S. 561, or to regulate the practice of law within its borders. **Brotherhood of Railroad Trainmen v. Virginia,** 377 U.S. 1, 6. This it has sought to do through the enactment of Section 51-88 of the General Statutes of Connecticut. In all, 46 states, including Connecticut, have enacted legislation seeking to prohibit the illegal and unauthorized practice of law.[6] Of the 46 statutes, 40 are

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[6]Ala. Code tit. 46 § 42 (Recomp. 1958); Alaska Stat. §08.08.210 (1955); Ariz. Rev. Stat. Ann. § 32-261A. (1956); Ark. Stat. Ann. § 25-106 (1962); Calif., Bus. & Prof. Code § 6125-6127 (West 1962); Colo. Rev. Stat. § 12-1-17 (1963); Conn. Gen. Stat. § 51-88 (Rev. 1958); Fla. Stat. Ann. § 454.23 1965); Ga. Code Ann. § 9-407 (Supp. 1965); Haw. Rev. Laws, § 217-14 (1955); Idaho Code Ann. § 3-104 (1951); Ill. Rev. Stat., ch. 13 § 1 (1957); Ind. Stat. Ann. § 4-3601 (1930); Iowa Code Ann. § 665.3 (1946); Ky. Rev. Stat. Ann. § 30.990 (1963); La. Rev. Stat. § 37:213 (1950); Me. Rev. Stat. Ann., tit. 4, § 807 (Rev. 1965); Md. Ann. Code, art. 10 § 1 (1957); Mass. Ann. Laws, ch. 221 § 46A (Rev. 1955); Mich. Stat. Ann. § 27A. 916 (Supp. 1962); Minn. Stat. Ann. § 481.05, (Rev. 1963); Miss. Code Ann., tit. 11 § 2332 and tit. 32, § 8682 (Recomp. 1956); Mo. Ann. Stat. § 484.020 (Vernon 1951); Mont. Rev. Code Ann. § 93.2008 (Rev. 1947); Neb.

penal in nature. The statute here in issue, Section

Rev. Stat. § 7-101 (Rev. 1943); Nev. Rev. Stat. § 7.285 (Supp. (1963); N.H. Rev. Stat. Ann. § 311.9 (1966); N.J. Rev. Stat., tit. 2 A, § 170-78 (Rev. 1953); N.M. Stat. Ann. § 18-1-26 (1953); N.Y. Penal Law § 272, (McKinney 1944); N.Y. Judiciary Law § 750 B (McKinney 1944); N.C. Gen. Stat. § 84-10 (1965); N.D. Cent. Code § 27-11-01 ;Ohio Rev. Code Ann. § 4705.01 (Rev. 1953); Ore. Rev. Stat. § 9.160 (Rev. 1963); Pa. Stat. Ann., tit. 17, § 1610 (Purdom 1961); R.I. Gen. Laws § 11-27-5 (Rev. 1956); S.C. Code of Laws Ann. § 56-141 (Rev. 1962); S.D. C. § 32.1121 (1960 Supp.); Tenn. Code Ann. § 29-303 (1955); Tex. Rev. Civ. Stat., tit. 14 § 320a-1 (Vernon 1959); Utah Code Ann. § 78-51-25 (1963); Va. Code § 54-44 (1950); Wash. Rev. Code § 2.48.180; W. Va. Code Ann. §2853 (1961); Wisc. Stat. Ann. § 256.30 (1955); Wyom. Stat. §33-61 (1957).

Ala. Code tit., tit. 46 § 42 (Recomp. 1958); Alaska Stat. § 08.08.230 (1955); Ariz. Rev. Stat. Ann. § 32-261 B (1956); Ark. Stat. Ann. §§ 25-106, 25-207 (1962); Calif. Bus. & Prof. Code § 6126 (West 1962); Conn. Gen. Stat. § 51-88 (Rev. 1958); Colo. Rev. Stat. § 12-1-17 (1963) (contempt); Fla. Stat. Ann. § 454.23 (1965); Haw. Rev. Laws § 217-15 (1955); Idaho Code § 3-104 (1951) (contempt); Ill. Rev. Stat. ch. 13, § 1 (1957) (contempt); Ind. Stat. Ann. § 4-3602 (1930); Iowa Code Ann. 665.3 (1946); La. Rev. Stat. § 37-213 (1950); Me. Rev. Stat. Ann., tit. 4, § 807 (Rev. 1965); Md. Code Ann. art. 10, § 32 (1957); Mass. Ann. Laws, ch. 221 § 46B (Rev. 1965); Mich. Stat. Ann. § 27A. 916 (Supp. 1962) (contempt); Minn. Stat. Ann. § 481.05 (Rev. 1963); Miss. Code Ann., tit. 11 § 2332 and tit. 32, § 8682 (Recomp. 1956); Mo. Ann. Stat. § 484.020 (1) (Vernon 1951); Mont. Rev. Code Ann. § 93-2008 (Rev. 1947) (contempt); Neb. Rev. Stat. § 7-101 (Rev. 1943); Nev. Rev. Stat. § 7.285 (Supp. 1963); N.H. Rev. Stat. Ann. § 311.9 (1966); N.J. Rev. Stat. tit. 2 A, § 170-78 (Rev. 1953); N.M. Stat. Ann. § 18-1-27 (1953); N.Y. Penal Laws § 272 (McKinney 1944); N.C. Gen. Stat. § 84-10 (1965); N.D. Cent. Code § 27-11-01; Ore. Rev. Stat., § 9.160 (Rev.

51-88, is not dissimilar from most of these other statutes. It provides that no person shall "practice law" or "make it a business to practice law," unless admitted to the bar of the state. This is the only portion of the statute with the violation of which appellant is charged.

The Supreme Court of Connecticut, in **Grievance Committee v. Payne,** 128 Conn. 325, 329, construed section 51-88 to be a penal statute. This interpretation is accepted by the Connecticut Supreme Court in the instant case. See 154 Conn. 129, 147; App. A, p. 18a.

The statute itself does not, however, define or even attempt to define the phrases "practice law" or "make it a business to practice law." In **Grievance Committee v. Payne, supra** at 329, the Connecticut court, in construing what is now Section 51-88 said:

> "Attempts to define the practice of law have not been particularly successful. The reason for this is the broad field covered. **The more practical approach is to consider each state of facts and determine whether it falls within the fair intendment of the term."** [Emphasis added.]

Accord, State ex rel. Johnson v. Childe, 139 Neb. 91, 95.

1963); Pa. Stat. Ann., tit. 17, § 1610 (Purdom 1961); R.I. Gen. Laws § 11-27-14 (Rev. 1956); S.C. Code of Laws Ann. § 56-141 (Rev. 1962); Tenn. Code Ann. § 29-303 (1965); Va. Code § 54-44 (1950); Wash. Rev. Code § 2.48.180; W. Va. Code Ann. § 2853 (1961); Wisc. tat. Ann. § 256.30 (1955); Wyom. Stat. § 33-61 (1957) (contempt).

In the instant case the state Supreme Court again recognized the fact that the phrase "practice law" is vague when it stated:

> "It is true that because of the manifold activities which might be included in the phrase "practice of law," an all-inclusive definition is difficult, if not impossible of formulation."

154 Conn. at 147; App. A, p. 18a.

These two interpretations of Section 51-88 by the Supreme Court of Connecticut should be accepted by the Supreme Court of the United States, and the constitutionality of the statute should be tested under this view. **Aero Transit Co. v. Board of Railroad Commissioners,** 332 U.S. 495, 499; **Gatewood v. North Carolina,** 203 U.S. 531, 541.[8]

The standard to which a penal statute is held when attacked on the ground that it violates the "Due Process Clause" was enunciated in **Giaccio v. Pennsylvania,** 382 U.S. 399, 402-03:

> "It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves

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[8]The characterization of the statute as civil or penal is not, however, the determinant. To the extent that it deprives the appellant of liberty and property, it must satisfy the standards of the Due Process Clause. **Giaccio v. Pennsylvania,** 382 U.S. 399, 402. Nor is the fact that this action was not itself a criminal prosecution material insofar as the constitutional requirements which the statute in issue must satisfy. **N.A.A.C.P. v. Button,** 371 U.S. 415, 432.

> judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case."

Accord, Cox v. Louisiana, 379 U.S. 536, 551; **Baggett v. Bullitt,** 377 U.S. 360, 367; **Edwards v. South Carolina,** 372 U.S. 229, 237.

The interpretation placed upon Section 51-88 of the General Statutes by the Connecticut courts clearly falls within the proscriptive language of **Giaccio v. Pennsylvania, supra.** The Connecticut court itself recognizes the vagueness of the statute. Since this is true, the statute is constitutionally defective because it is not

> "sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties."

Lanzetta v. New Jersey, 306 U.S. 451, 453; **Connally v. General Construction Co.,** 269 U.S. 385, 391; **International Harvester Co. v. Kentucky,** 234 U.S. 216, 223.

The Connecticut Supreme Court has paid lip service to the rule enunciated in **Lanzetta** (154 Conn. at 147; App. A, p. 18a), but has attempted to circumvent the application of this rule to Section 51-88 by looking **retrospectively** at the activities of appellant and then holding:

> "The mere fact that some activities might be engaged in which would be so close to the borderline that informed members of the bar might differ as to whether they did or did not constitute the practice of law is of no assistance to this defendant. . . . His three basic activities which

are adversely affected by the statute, and by the judgment, are, and always have been, commonly understood to be the practice of law." 154 Conn. at 147-48; App. A, pp. 18a-19a.

This is no answer to the claim that Section 51-88 is unconstitutionally vague. For "if on its face the challenged provision is repugnant to the due process clause [and this statute is admittedly vague], specifications of the details of the offense intended to be charged would not serve to validate it. . . ." **Lanzetta v. New Jersey**, 306 U.S. 451, 453.

It is submitted that the Supreme Court of Connecticut has either misapplied the rule so often enunciated by this Court in passing upon the constitutionality of Section 51-88 or has intentionally sought to avoid declaring the statute unconstitutional by looking retrospectively at the conduct of appellant to discover a violation of the statute.[9]

The constitutionality of Section 51-88 has not been heretofore passed upon. Nor for that matter has the

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[9]In fact, the court went so far as to describe appellant's activities as presenting "a sordid picture" (154 Conn. at 156, App. A, p. 27a), a phrase which has been seized upon by the American Bar Association and the press and periodicals throughout the country. The reason for this characterization of appellant's activities is difficult to conceive, especially in light of the cases involving the Connecticut Bank & Trust Co. (145 Conn. 222 and 146 Conn. 556) which was found to be engaging in the unauthorized practice of law but whose conduct was never described in similar language, even though the nature, scope, and breadth of the bank's activities far exceeded those of the appellant in the instant case.

constitutionality of any of the unauthorized practice of law statutes set forth **supra** pp. 11-12, footnote 6, been passed upon. The vast majority of them, although providing for the imposition of criminal sanctions, including contempt, make no attempt to define the conduct which will subject a person to the penalties.[10]

In the face of these statutes a person must act at his peril, hopeful that his conduct will not unknowingly generate legal action against him. This peril is especially true with regard to the appellant. Mr. Dacey, in addition to being a noted authority on estate planning, is the author of the best-selling book, "How To Avoid Probate," a book which has been on the New York Times top-ten non-fiction best-sellers' list for 42 consecutive weeks and was in first place for approximately 25 weeks of those 42 weeks.

The issues in the instant case are brought most dramatically into focus by the very recent action of the New York County Lawyers' Association which has just sought a decree, pursuant to Section 750B of the New York Judiciary Law, adjudging the appellant herein guilty of criminal contempt of court.[11]

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[10]The following states have attempted, with varying degrees of success, to define what conduct constitutes the "practice of law": Ala. Code, tit. 46, § 42 (Recomp. 1958); Ga. Code Ann. § 9-401 (Supp. 1965); La. Rev. Stat. § 37:212 (1950); Minn. Stat. Ann. § 481.05 (Rev. 1966); R.I. Gen. Laws § 11-27-2 (Rev. 1956); Tenn. Code Ann. § 29-302 (1955); W. Va. Code § 2853 (1957).

[11]In the Matter of the Petition of New York County Lawyers' Association, v. Norman F. Dacey, Norman F. Dacey doing business as National Estate Planning Council, Crown Pub-

The petitioners therein claim that the mere publication and sale of Mr. Dacey's book in New York constitutes the unauthorized practice of law under Section 750B of the New York Judiciary Law. The New York statute is virtually identical in all material respects to Section 51-88 of the General Statutes of Connecticut. Neither defines nor attempts to define the "practice of law."

Appellant is in peril of prosecution in at least 39 other jurisdictions, including Connecticut, which, like New York, have statutes which prohibit but do not define what constitutes the "practice of law." This threat of prosecution still exists in Connecticut for, under Section 51-88, a criminal prosecution can still be instituted.

The impact which Section 51-88 has upon this appellant is great. The peril confronting him under this section as well as the peril facing him under similar vague statutes in many other states is very substantial. This is true not only with reference to this appellant and other estate planners but to all persons whose fields of activity place them partially in the "gray and shadowy" areas, e.g., real estate brokers, title insurance companies, trust companies, accountants — where frequently the line of demarcation between what conduct may or may not constitute the "practice of law" is ill-defined.

This Court has never had occasion to pass upon

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lishers Inc., Doubleday & Co., Inc. and Brentano's Inc., Supreme Court of the State of New York, County of New York, Special Term, Part I, returnable 20 February, 1967.

the issue raised by this appeal. Nor has any state supreme court passed upon this question prior to the instant case. It is submitted that the due process question raised herein is even more substantial than those questions raised either in **Konigsberg v. State Bar of California,** 353 U.S. 252 or **Schware v. Board of Bar Examiners of New Mexico,** 353 U.S. 232.

That a definitive statute can be enacted which specifies both the permissible and the proscribed conduct is demonstrated by Section 581.05 of the Minnesota Statutes, App. H, pp. 58a-65a. Other attempts, with varying degrees of success, have been made. See, e.g., Ala. Code, tit. 46, Section 42 (Recomp. 1958), App. I, pp. 66a-67a. Thus there is no excuse for a statute such as Section 51-88 to exist in such an unconstitutionally vague form, requiring appellant and others similarly situated to act at their peril or refrain from acting and, concurrently, refrain from pursuing an otherwise permissible livelihood.

It may be well for the Connecticut Supreme Court to look with hindsight upon the activities of the appellant and conclude that his activities violate the statute here in issue. But in following this course they apparently expect the appellant to be blessed with a foresight far beyond the realm of reasonableness, or a capacity to delve into the unknown and ascertain precisely for himself in advance what conduct on his part will subject him to the penalties of the Connecticut statute. This, to adopt an understatement, is asking a bit too much.

A statute such as Connecticut's Section 51-88

which fails to define clearly the nature of the practice of law leaves a layman at the mercy of the courts and to the court's **ad hoc** hindsight determination of what is unauthorized (**Grievance Committee v. Payne,** 128 Conn. 325, 329) and thereby subjects him to unjust penalties and harrassments. He thus suffers not only the loss of "due process of law" but as part of this procedure, the serious limitations on his rights of free speech. This presents serious and substantial federal questions deserving this Court's decision in order to shield the appellant from an attack not properly specified by the terms of an adequately drawn statute.

B. THE SCOPE OF THE INJUNCTION VIOLATES APPELLANT'S RIGHT OF FREE SPEECH

The Superior Court of Connecticut, after the trial of this action, issued an injunction (App. D, pp. 46a-47a) enjoining the appellant from:

> "(a) Engaging in the drafting and/or preparation of wills, trusts, trust agreements and similar documents and/or advising and counseling any person concerning said documents, the effects thereof and the laws applicable thereto.
>
> "(b) Arranging for and supervision of the execution of wills, trust agreements and similar documents and/or advising and counseling any person concerning the legal effect of execution of said documents and the laws applicable thereto.

"(c) Advertising and/or soliciting in any manner to suggest to or induce any persons to consult said Norman F. Dacey and/or Norman F. Dacey and Associates, Incorporated, their officers, associates, agents or servants, concerning the preparation and/or execution of wills, trusts and trust agreements or similar documents and/or concerning the legal effects thereof and/or the operation and effect of laws applicable thereto."

The State of Connecticut undoubtedly has the power to regulate the practice of law within its borders. **Brotherhood of Railroad Trainmen v. Virginia,** 377 U.S. 1, 6. However, it cannot, by invoking the power to regulate the professional conduct of attorneys or to prevent the unauthorized practice of law, ignore the rights of individuals secured under the First and Fourteenth Amendments.

That the First Amendment freedoms "must be ringed with adequate bulwarks" (**Bantam Books v. Sullivan,** 372 U.S. 58, 66) and need breathing space to survive, (**N.A.A.C.P. v. Button,** 371 U.S. 415, 433) has been recognized by the Connecticut Supreme Court previously. In **State Bar Association v. Connecticut Bank & Trust Co.,** 145 Conn. 222, 236 the court held that the dissemination of general information concerning the "application, scope and effect of various laws and in reviewing wills and trust agreements" did not constitute the practice of law. In fact, in **State Bar Association v. Connecticut Bank & Trust Co.,** 146 Conn. 563-64 (fn. 3) the **Supreme Court** (rather than the trial court) itself

finally redrafted and framed the language of the injunction, including in it a declaration of rights of the parties.

Yet in the instant case the same court concludes that an injunction which prohibits even "advertising . . . or soliciting in any manner to suggest to or induce any persons to consult said Norman F. Dacey . . . concerning the preparation . . . or execution of wills, trusts and trust agreements or similar documents . . . or concerning the legal effect thereof . . . or the operation and effect of laws applicable thereto" satisfies the protections granted by the First Amendment.

Granting that the giving of specific legal advice by a non-lawyer is prohibited, the injunction does more than prohibit this conduct. To the extent that "advertising" is prohibited, then it might be claimed by the Connecticut Bar Association that the publication and advertising for sale by Mr. Dacey of the book "How to Avoid Probate" might fall within the scope of the injunction. The scope of the injunction is both overly broad and vague, requiring the appellant either to act at his peril, subject to being held in contempt of court, or to refrain from exercising the rights guaranteed to him under the First and Fourteenth Amendments.

The purpose sought to be achieved by the injunction (i.e. the prohibition of acts which constitute the unauthorized practice of law), may be legitimate and substantial, nevertheless, "that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more nar-

rowly achieved." **N.A.A.C.P. v. Alabama**, 377 U.S. 288, 307.

The appellant, as previously noted, has appeared on national radio and television, discussing estate planning generally as well as his book. Both he and his book have been subject to attack by local bar associations and by the American Bar Association. His fear of prosecution for contempt on the ground that his television appearances or that the advertisements of his book fall within the excessive scope of the statute is not mere speculation.[12] Nor is there any

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[12]In the action commenced by the New York County Lawyers' Association, **supra**, note 11, p. 17, the petition alleges, in part:

"12. Upon information and belief that the aforesaid respondents, NORMAN F. DACEY, and his alter ego, "NATIONAL ESTATE PLANNING COUNCIL", have entered into an agreement or arrangement wherein and whereby they have caused the respondent, CROWN PUBLISHERS, INC. to print, publish, sell and offer for sale within the State of New York, large quantities of the various "forms", instruments, documents and writings, authored and prepared by the respondent, NORMAN F. DACEY, and described in paragraph "8" above attached hereto, in conjunction, and together, with copies of the book or treatise entitled "How to Avoid Probate!".

"13. Upon information and belief, that at all the times hereinafter mentioned the respondent DOUBLEDAY & CO. INC. was, and still is a corporation duly authorized to do business in the State of New York."

"17. (A) Upon information and belief that the respondents pursuant to arrangements or agreements between them have severally and jointly caused advertisements to be printed, published, broadcast and disseminated to members of the public in the State of New York, wherein and

reason for believing that the Connecticut bar will or will not attempt to take such action.

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whereby they represented that the "forms", writings, documents and instruments attached, annexed to and included in the book or treatise entitled "How to Avoid Probate!", were prepared and designed by "one of the country's leading professional estate planners", and the use thereof by the purchaser would enable him to transfer at his death, and avoid probate of, various properties such as residences and other real estate, bank accounts, stocks and bonds, mutual fund shares, closed corporations, small unincorporated business, personal effects and automobiles.

(b) Would enable him to make gifts to minors and charities and to save taxes.

(B) Said respondents further represented in such advertising:

(a) That the materials offered for sale as aforesaid included 23 trust instruments and 12 will forms, complete with clear, understandable instructions and ready for use.

(b) That each "form", writing or document included in the sale could be detached from the said book or treatise for actual use.

(c) That the "forms", writings and documents, instruments, included in the sale could be prepared by the member of the public, himself, and such use could enable him to arrange his affairs legally and at no cost.

(d) That the "forms", writings and documents included in the sale were legally sufficient to accomplish the purposes enumerated above in this paragraph.

(Representative copies of the advertisements referred to in the foregoing paragraph are annexed hereto and marked Exhibits HHH, JJJ, KKK and MMM)."

"18. Upon information and belief, the respondent authored, prepared, designed, drafted and wrote the "forms", writings and documents described in paragraph "8" hereof, caused the copyright pertaining thereto to be issued, transferred and assigned to the respondent, NATIONAL ESTATE PLANNING COUNCIL, entered into the arrange-

The alternative open to appellant is to remain silent, and to abandon his right to speak or publish. In **Griswold v. Connecticut**, 381 U.S. 479, 482-83, this Court said that a

> "State may not consistently with the spirit of the First Amendment, contract the spectrum of available knowledge, the right of freedom of speech and press includes not only the right to receive, the right to read . . . and freedom of inquiry, freedom of thought and freedom to teach . . . — indeed the freedom of the entire university community . . . without these peripheral rights the specific rights would be less secure."

The substantiality of the question posed by the scope of the injunction lies not only in the limitations placed upon appellant himself. It rests also on the fact that the restrictions upon appellant also place a limitation upon the "entire university community" — its right to receive and read that which appellant has to say. It is this right which the appellee seeks to bar and by the decision in the instant case has thus far successfully barred.

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ments described in paragraph "12" and "13" and "17" hereof for the purpose and with the intent of enabling him to avoid, evade and circumvent an injunction issued by the Superior Court of Fairfield County, Connecticut, and affirmed by the Supreme Court of that State in Grievance Committee of the Bar Association of Fairfield County v. Norman F. Dacey, 222 A 2d 339 (1966), which injunction prohibited said respondent from performing the acts, and rendering the advice complained of herein to members of the public in said State directly."

VIII

CONCLUSION

The fundamental questions raised here are where the balance shall be struck between the power of the state and the rights of the individual. In a society which so cherishes and guards the freedom of the individual, there are no more important federal questions than the extent to which a state can abridge these freedoms.

Respectfully Submitted,

GEORGE A. SADEN,

955 Main Street
Bridgeport, Connecticut
Attorney for Appellants.

APPENDICES

APPENDIX A.

OPINION OF THE SUPREME COURT.

King, C. J. This action was brought by the Grievance Committee of the Bar of Fairfield County seeking an injunction to restrain the defendants from engaging in the unauthorized practice of law in violation of General Statutes § 51-88.[1]

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[1]"Sec. 51-88. Practice Of Law By Persons Not Attorneys. No person who has not been admitted as an attorney under the provisions of section 51-80 shall pratice law or appear as an attorney at law or as attorney and counselor at law for another, in any court of record in this state, or make it a business to practice law, or appear as an attorney and counselor at law for another in any such court, or make it a business to solicit employment for a lawyer, or hold himself out to the public as being entitled to practice law, or assume to be an attorney or counselor at law, or assume, use or advertise the title of lawyer, or attorney and counselor at law, or attorney at law, or counselor at law, or attorney or counselor or attorney and counselor or equivalent terms, in such manner as to convey the impression that he is a legal practitioner of law or in any manner advertise that he, either alone or together with any other person or persons, owns, conducts or maintains a law office, or office or place of business of any kind for the practice of law. Any person who violates any provision of this section shall be fined not more than two hundred and fifty dollars or imprisoned not more than two months or both. Any person who violates any provision of this section shall be deemed in contempt of court, and the superior court shall have jurisdiction in equity upon the petition of any member of the bar of this state in good standing

The defendants' attempts to secure additions to the finding are largely without merit. **Brown v. Connecticut Light & Power Co.**, 145 Conn. 290, 293, 141 A.2d 634. The same may be said of most of their attempts to secure deletions from the finding. With two exceptions, hereinafter discussed, the few changes to which the defendants have shown themselves entitled will be included, insofar as material, in the facts as stated.

The defendant Norman F. Dacey is the president, treasurer, and principal stockholder of the corporate defendant, Norman F. Dacey and Associates, Inc. In this action, no distinction has been made between the individual defendant and the corporate defendant, and for convenience the individual defendant, only, will hereinafter be mentioned.[2]

Dacey's principal business is that of a dealer in the sale of shares in mutual funds, including one known as the Wellington Fund. Dacey also engages

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or upon its own motion to restrain such violation. Nothing herein contained shall be construed as prohibiting a town clerk from preparing or drawing deeds, mortgages, releases, certificates of change of name and trade name certificates which are to be recorded or filed in the town clerk's office in the town in which such town clerk resides or as prohibiting any person from practicing law or pleading at the bar of any court of this state in his own cause."

[2]Of course it is settled law that a corporation cannot practice law. **State Bar Assn. v. Connecticut Bank & Trust Co.**, 145 Conn. 222, 234, 140 A.2d 863. And this is true even though it acts through attorneys who are themselves members of the bar. Id., 235; see also General Statutes § 51-88; Canons of Professional Ethics, No. 35, Practice Book, p. 13.

in what he terms estate planning, which largely involves his giving advice as to investments and life insurance and does not necessarily involve the sale of shares in the Wellington Fund or in any other mutual fund or the preparation of any will or trust. But if a discussion with a customer as to his financial circumstances reveals that his assets are sufficient to warrant the creation of a trust, Dacey provides him with a thirty-page booklet entitled "A Modern Plan For Your Tomorrows" with the subtitle "An Explanation of the Dacey Trust". The first six pages of the booklet contain general information about the history and use of inter vivos and testamentary trusts, together with some tax information. The balance of the booklet contains a detailed description of the Dacey trust arrangement, consisting of the Dacey trust and the Dacey will, and of the claimed unique advantages of the trust arrangement. Also included are a form for drafting a Dacey trust, a form for drafting an implementing declaration of trust and a form for drafting a Dacey will. In other words, the last twenty-four pages of the booklet do not contain mere general information but information focused specifically on the Dacey trust arrangement and its component parts, the Dacey trust and the Dacey will, and also, inter alia, information as to the tax consequences flowing from the use of the trust arrangement. The Dacey trust form, as set out in the booklet, is a revocable, inter vivos trust, and the corpus of the trust is usually composed initially of life insurance policies. The record indicates that in connection with the execution of a Dacey trust, the client (and in some cases his wife) usually, if not always, executes a will also. The trust and the

will basically follow the trust and will forms in the booklet.

When, after reading the booklet and after conferring with Dacey, a client decides that he wants a Dacey trust, he informs Dacey of the manner in which he wishes his property to be distributed after his death. Thereafter, Dacey supplies a will and a trust, respectively patterned, in general, after the will form and the trust form in the booklet, prepares them by filling in the blanks, and supervises their execution.[3] In some instances, as disclosed by the exhibits, Dacey supplied instruments which materially deviated from the forms in the booklet. Although the booklet stated that the forms contained therein were "for the guidance of your attorney", so far as this record indicates, none of Dacey's customers consulted an attorney in connection with the preparation and execution of these wills and trusts, nor did Dacey urge them so to do. In some instances, Dacey orally supplemented the advice in the booklet as to the tax consequences of the use of these instruments. See note, 9 A.L.R.2d 797.

Although it did not clearly appear that Dacey ever charged for the preparation of a trust or will, as such, he did provide in the will form that upon the death of the testator the entire estate, except for tangible personal property, should go into the corpus

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[3]In the case of the will, it was admitted that no printed form was filled out and that each will was typewritten throughout. But for reasons hereinafter stated, whether printed forms were or were not used is, under the circumstances of this case, immaterial.

of the trust and that substantially the entire corpus should be invested in shares of the Wellington Fund which should be purchased from Dacey. Under his contract with the Wellington Fund, Dacey received 6 percent commission on all sales of shares of the Wellington Fund. Thus, as a direct consequence of his preparation of the Dacey trust arrangement, Dacey virtually assured himself of what amounted to a 6 percent sales commission on almost the entire assets of each estate. Compensation may have been frequently deferred, but it was substantial when received. The court found that the money involved in the trust arrangements prepared by Dacey amounted to several million dollars. On most, if not all, of this sum, he would receive a 6 percent commission.

Thus, this case does not involve any problem as to whether the absence of any compensation whatsoever for the preparation of a legal instrument has any bearing on whether its preparation constitutes the practice of law under our statute. The wills and trusts here were certainly not prepared "as a favor to a friend." See **Grievance Committee v. Payne,** 128 Conn. 325, 329, 22 A.2d 623.

Nor does this case involve any problem as to whether the preparation of a single will or trust, as an isolated occurrence, would constitute the practice of law in violation of our statute. Here, even on the statement in his own brief as to the extent of his activities, Dacey has prepared sixty-five or seventy trusts or wills over a span of thirteen or fourteen years.

With this preliminary statement of the basic facts,

we turn to the defendant's principal claims. Further facts will be given where it appears necessary for an understanding of these claims.

I

(a)

One basic claim of the defendant is that a proper construction of § 51-88 of the General Statutes would require that where, as here, there is no claim that Dacey was practicing law in the courts, a violation of the statute can be established only if there is proof that he made it a business to practice law; and that, since the court made no conclusion to this effect, the ultimate conclusion that he violated the statute is thus left without support. The defendant claims that the presence of the comma in § 51-88 before "in any court of record in this state" shows that the quoted phrase modifies both "practice law" and "appear as an attorney". From this contention, he argues that the statute prohibits the practice of law only in the courts, and that the practice of law outside the courts is prohibited only if it is conducted as a business. Superficially, and as a mere matter of punctuation, this claim seems to have some merit. But it is clearly contrary to the holdings in **Grievance Committee v. Payne**, supra, 330, and in **State Bar Assn. v. Connecticut Bank & Trust Co.**, 145 Conn. 222, 233, 140 A.2d 863. It is also completely refuted, as hereinafter more particularly set forth, by the statutory history and evolution of what is now General Statutes § 51-88.

Until the enactment of chapter 159 of the 1927 Public Acts, the only statute forbidding the practice of law by persons not admitted to the bar was § 5461 of the 1918 Revision of the General Statutes, which provided that the Superior Court should admit as attorneys persons found qualified according to rules adopted by the judges of that court and further provided that "no other person than an attorney, so admitted, shall plead at the bar of any court of this state, except in his own cause." Literally, at least, this statute did not forbid the practice of law outside the courts.

The 1927 act did not amend or repeal § 5461, so that the prohibition in that section was left in full effect. But the 1927 act did provide, in material part, that "[n]o person who has not been admitted as an attorney by the superior court under the provisions of section 5461 of the general statutes shall practice or appear as an attorney at law or as attorney and counselor at law for another, in any court of record in this state, or make it a business to practice, as an attorney at law, or as an attorney and counselor at law for another in any such court".

It is obvious that the 1927 act fell short of being a model of good draftsmanship. For one thing, the first portion added little if anything to § 5461 so far as practice in court was concerned and therefore was repetitious of § 5461. The 1927 act forbade practicing in the court, as well as making it a business to practice, as an attorney at law or as attorney and counselor at law for another in any court of record in this state. Although, as hereinafter pointed out,

the second provision is not involved in this case, it was apparently inserted, out of an abundance of caution, to prohibit a person from making it a business to practice in a court even though, for lack of clients or other cause, he did not actually engage in practice in court. The defendant has seized upon this second provision, as it now appears in General Statutes § 51-88, in support of the claim now under discussion.

In the 1930 Revision of the General Statutes, § 5461 of the 1918 Revision was included, without change, as § 5343, while the 1927 act, without change, became § 5345.

In 1933, § 5343 was amended by inserting the words **"practice law or"** before "plead at the bar of any court of this state," so that section, as amended, provided that "no other person than an attorney, so admitted, shall **practice law or** plead at the bar of any court of this state." Cum. Sup. 1933, § 1128b (Cum. Sup. 1935, § 1627c). Section 5345 was similarly amended. Cum. Sup. 1933, § 1129b (Cum. Sup. 1935, § 1628c).

There would have been no purpose in the 1933 amendment to § 5343, or to § 5345, if the defendant's present contention were sound. The addition of **"practice law or"** to § 5343 was meaningless if it was to refer only to court activities. One could hardly practice law in a court without pleading at the bar of that court. Nor is there any difference between practice in a court and the practice of law in a court. Thus, the 1933 amendment to § 5345, under the defendant's theory, would add nothing to that

section. Certainly one does not practice anything but law in a court. An amendment is not to be rendered inefficacious or meaningless merely because a comma was carried over from the statute as it stood prior to the amendment. See cases such as **Kubis v. Cornwall**, 95 Conn. 720, 723, 112 A. 663.

The vital point in each of the 1933 amendments is that the prohibition was clearly made applicable to the practice of law, although, apparently out of an abundance of caution, the appearance for another in any court of the state was also prohibited. This change in each section, and its effect, was noted in **Grievance Committee v. Payne**, 128 Conn. 325, 330, 22 A.2d 623. Whatever might have been the case prior to the 1933 amendments, after their effective date the practice of law, in or out of court, was clearly forbidden except in the case of persons admitted to the bar under § 5343 as amended. **State Bar Assn. v. Connecticut Bank & Trust Co.**, 145 Conn. 222, 233, 140 A.2d 863. Indeed, this was so, after the 1933 amendment to § 5343, even without resort to § 5345 or to the 1933 amendment thereto.

Subsequent statutory changes are of little importance in this case. The present provision for enforcement by equitable decree and by contempt proceedings was added to § 5345 by § 827d of the 1937 Supplement (Cum. Sup. 1939, § 1381e), and the present provision making a limited exemption for town clerks was added to § 5345 by § 721g of the 1943 Supplement, apparently as a result of the decision in the **Payne** case.

In the 1949 Revision of the General Statutes,

§ 5343, as amended in 1933, became § 7638, while § 5345, as amended in 1933, 1937 and 1943, became § 7641.

In the 1958 Revision of the General Statutes, § 7638 became § 51-80, while § 7641 became § 51-88. The redundancy in the prohibition against the practice of law in court in §§ 7638 and 7641 seems to have been detected by the revisers, who removed from § 51-80 the prohibition against the practice of law which had been added in 1933, as well as the original prohibition against pleading at the bar of any court. The effect of this was to leave § 51-88 as the only statute prohibiting the practice of law in or out of court, but to incorporate into § 51-88 the prohibition against the practice of law in or out of court which the 1933 amendment had inserted in what was § 5343 of the 1930 Revision.

The defendant's claim that the practice of law, out of court, is not forbidden unless carried on as a business is without merit. The defendant was forbidden by § 51-88 to practice law in or out of court. This being so, it was of no consequence that the court did not include in its finding any conclusion that he made it a business to practice law. The only question is whether what he did constituted the practice of law. Whether he also could be said to have made it "a business to practice law" need not, on the facts of this case, be determined.

(b)

One attack on the finding will now be separately considered. The defendant attacks the statements

of the trial court, in many of its findings, that he "drafted" the wills and trusts involved in this case. Dacey claimed in his testimony that he "prepared" them. But there is little dispute as to what he actually did in connection with the wills and trusts. We are not here concerned with whether these acts constitute "drafting" or "preparing" but with whether they constituted the practice of law. See **State Bar Assn. v. Connecticut Bank & Trust Co.**, supra, 236.

The question whether the mere filling in of blank forms and then supervising their execution constitutes the practice of law has been a subject of some contrariety of decision, principally because of variations in the fact patterns and in the applicable statutes. See the cases collected in the annotations in 111 A.L.R. 19, 24 § IIIa; 125 A.L.R. 1173, 1175 § IIIa; 151 A.L.R. 781, 783 § IIIa; 53 A.L.R.2d 788, 807 § 5. Here, however, no such question arises since Dacey did far more than fill in blanks. Although he claimed that usually only the printed forms in the booklet were used, the court found that deviations from the printed forms were made in several instances, and this finding is supported by the exhibits in evidence. The determination that a given form should be followed without change is as much an exercise of legal judgment as is a determination that it should be changed in given particulars. In either case, legal judgment is used in the adaptation of the form to the specific needs and situation of the client. The claim that Dacey did no more than take an attestation to an otherwise already complete instrument, as a notary public might do, is so lacking in merit as to require no discussion.

The trust agreement for Malcolm C. Browne, for instance, included special provisions relating to continuing the operation of the Browne Construction Company and restricting the disposition of the settlor's stock in that company. The trusts for Herman and Ann Springer bear almost no resemblance to the form in the booklet. The wills of Nancy A. Gurney and Barbara S. Browne each contain an alternative provision in the event the husband of the testatrix predeceases her, although no such provision appears in the will form in the booklet, and each omits a provision in the booklet which avoids the statutory revocation of the will in the event of the subsequent birth of a child. The defendant makes much of a finding that all of the instruments in evidence were copies of the forms in the booklet. This finding was erroneous and inconsistent with the finding as to deviations from the forms. The erroneous finding was apparently based on misleading and inaccurate testimony to that effect given at one point by Dacey. The exhibits themselves fully support the finding as to deviations and demonstrate that any testimony of Dacey to the contrary was inaccurate. From these facts it was not unreasonable for the trial court to conclude that Dacey, after consultation with the client, suggested what provisions should be included in the wills and trust agreements. There was no other reasonable way in which they could have been adapted, as they obviously were, to the particular client's needs and situation.

Thus, Dacey has done much more than merely to make available to his customers the trust form and the will form printed in the booklet. Not only was

the trial court not in error in concluding that Dacey's acts in connection with the trusts and wills constituted the practice of law, but any other conclusion would have been wholly unreasonable.

(c)

We turn now to the second basic attack on the finding. The defendant complains of numerous findings to the effect that he gave "advice" on the legal effect of the documents as executed and on their tax consequences. It is his claim that he gave only general information on these subjects as permitted by the rule of **State Bar Assn. v. Connecticut Bank & Trust Co.**, 145 Conn. 222, 226, 140 A.2d 863. In that case, the defendant banks did not give final or specific advice, nor did they give their customers the terms to be incorporated in their wills and trusts. The first six pages of Dacey's booklet might perhaps fall within the classification of general information. The balance of the booklet was focused on the Dacey trust arrangement, including the Dacey trust and the Dacey will. This information was necessarily amplified in the oral discussions resulting in the preparation and execution of a will or trust adapted to the needs of the particular client.

Dacey himself sums up the true situation rather well on page 23 of his booklet, wherein he says that the "dealer [in mutual funds] may have rendered . . . [the client] invaluable service by bringing the advantages of this [Dacey] trust arrangement to his attention and by assisting him in adapting it to his needs. Most Settlors regard designation of the dealer

in the trust [as the person from whom the trustee is to buy the mutual funds] as appropriate compensation."

In **State Bar Assn. v. Connecticut Bank & Trust Co.**, supra, the banks' customers were urged to consult their own attorneys for advice on their specific situations. There was no actual form of will or trust proposed to the customers as was the case here, nor did the banks prepare any trust or will for their customers' execution.

The booklet distributed by the defendant contained several statements that the forms therein were "for the guidance of your attorney," and thus clearly indicated Dacey's awareness that the adoption, adaptation, and execution of such instruments could be properly, and legally, done only by an attorney. Notwithstanding this awareness, however, Dacey prepared the instruments, in some instances altering the forms, and supervised their execution, although the customers were not represented by attorneys. When the information given is directed toward a particular person and his needs and to a particular instrument prepared for his execution, it is no longer within the "general information" classification but has become legal advice embraced within the phrase "practice of law." That was the case here.

(d)

The defendant seems to make some claim that the trust arrangement was merely incidental to his main business as an estate planner and salesman of shares in mutual funds, under the rule of **State Bar Assn. v.**

Connecticut Bank & Trust Co., 146 Conn. 556, 563 n.3, 153 A.2d 453. This claim is without merit. It is true that the Dacey trust arrangement was an excellent method of selling shares in mutual funds. Indeed, the commissions involved on the future sales of Wellington Fund shares to the trustees may well run to several hundred thousand dollars.

But the defendant cannot practice law as a method of selling mutual funds, any more than the banks, in the case he relies upon, could draft wills and trusts to augment the profits of their trust departments. The defendant's effort to escape the impact of the statute on the ground that his legal activities were incidental to his other businesses is wholly inefficacious. See **Oregon State Bar v. Miller**, 235 Ore. 341, 344, 385 P.2d 181.

II

We pass now to two claims of unconstitutionality raised by this defendant.

(a)

The first claim is that § 51-88 of the General Statutes is unconstitutional because of vagueness, under the rule of cases such as **Lanzetta v. New Jersey**, 306 U.S. 451, 453, 59 S. Ct. 618, 83 L. Ed. 888.

One ground on which this claim is based is that in **Grievance Committee v. Payne**, 128 Conn. 325, 329, 22 A.2d 623, we said: "Attempts to define the practice of law have not been particularly successful. The reason for this is the broad field covered. The more

practical approach is to consider each state of facts and determine whether it falls within the fair intendment of the term." The defendant claims this position means that the phrase "practice of law" has no exact, clear meaning and therefore lacks the specificity requisite in a penal statute. If this claim were true, and it is not, then a statute forbidding the practice of law, as distinguished from a statute forbidding an itemized list of specific acts falling within the common understanding of the term "practice of law", must necessarily be unconstitutional as to all persons.

As another ground of attack, the defendant has seized upon the statement in the **Payne** case (p. 330) that the statute, as amended in 1933, was intended to prohibit the performance of acts by persons not attorneys, in or out of court, "commonly understood to be the practice of law" and upon the carrying over of the quoted phrase into the opinion in the later case of **State Bar Assn. v. Connecticut Bank & Trust Co.**, 145 Conn. 222, 236, 140 A.2d 863. In other words, the defendant seems to claim that the statute does not merely prohibit the practice of law but, at least as construed by this court, prohibits anything found to be "commonly understood to be the practice of law", and for that reason lacks the required specificity.

This argument is ingenious rather than persuasive. The quoted phrase was first used in the **Payne** case in pointing out that the statute, prior to the 1933 amendment, might be susceptible of a construction limiting its prohibitions to court appearances and

activities; and that the effect of the 1933 amendment was to remove any doubt that the statute forbade, not merely practice in the courts, but "the performance of any acts by persons not admitted as attorneys, in or out of court, commonly understood to be the practice of law." **Grievance Committee v. Payne**, supra, 330.

The reasons and public policy obviously prompting the General Assembly to extend the statutory prohibition against the unauthorized practice of law to out-of-court activities, such as those engaged in by this defendant, are well set forth in **State Bar Assn. v. Connecticut Bank & Trust Co.**, supra, 234, and need not be repeated.

Section 1-1 of the General Statutes provides that "[i]n the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly." See cases such as **Hardware Mutual Casualty Co. v. Premo**, 153 Conn. 465, 474, 217 A.2d 698; **State v. Benson**, 153 Conn. 209, 214, 214 A.2d 903; **Baker v. Norwalk**, 152 Conn. 312, 315, 206 A.2d 428.

The use of the phrase "commonly understood to be the practice of law" was merely a shorthand expression for incorporating into the term "practice of law" the rule of construction embodied in General Statutes § 1-1, previously quoted. It did not, as the defendant claims, inject any element of uncertainty into the statutory prohibition against the practice

of law. It is the practice of law, whether in or out of court, which, in the case of one not admitted to the bar of this state, is proscribed by the statute.

It is true that because of the manifold activities which might be held included in the phrase "practice of law," an all-inclusive definition is difficult, if not impossible, of formulation. But there is and can be no question that the activities of Dacey, in the respects involved in this case, of preparing wills and trusts for particular members of the public, and of advising, as to the desirability in their circumstances, of the specific wills or trusts so prepared for them, constituted the practice of law within the obvious scope of the statute.

"It is, of course, true that due process requires that a penal statute 'be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties.' **Connally v. General Construction Co.**, 269 U.S. 385, 391, 46 S. Ct. 126, 70 L. Ed 322; **International Harvester Co. v. Kentucky**, 234 U.S. 216, 223, 34 S. Ct. 853, 58 L. Ed. 1284." **State v. Hurliman**, 143 Conn. 502, 509, 123 A.2d 767.

But "[i]t is fundamental that no one will be heard to question the constitutionality of a statute unless he is adversely affected by it." **State v. Hurliman**, supra, 506. The mere fact that some activities might be engaged in which would be so close to the border line that informed members of the bar might differ as to whether they did or did not constitute the practice of law is of no assistance to this defendant. There is nothing to indicate that the particular legal

activities which are involved in this case are of such a character that they are not clearly embraced in the phrase "practice of law." Consequently, the statute is not unconstitutionally ambiguous in its impact on the defendant. **Hardware Mutual Casualty Co. v. Premo,** supra, 471. His three basic activities which are adversely affected by the statute, and by the judgment, are, and always have been, commonly understood to be the practice of law. The claim of unconstiutionality for vagueness is, as to this defendant, without merit.

(b)

A further claim of unconstitutionality is that the defendant's right of free speech, accorded under the first amendment to the federal constitution, has been illegally abridged in the scope or breadth of the terms of the injunction granted against him in this case. The specific claim of invalidity pursued in the defendant's brief is the prohibition in subdivision (a) of the injunctive provisions of the judgment against "advising and counseling any person concerning said documents, the effects thereof and the laws applicable thereto."

It is clear from a reading of the judgment that the words "said documents" refer to "wills, trusts, trust agreements and similar documents" which the defendant has prepared for individual clients. This is a very limited injunction and in nowise deprives the defendant of any rights, whether constitutionally protected or not, to which he could reasonably claim to be entitled. It also achieves the degree of speci-

ficity required in an injunction under cases such as **Labbadia v. Bailey**, 147 Conn. 82, 86, 157 A.2d 237, and cases cited.

We find nothing in **Brotherhood of Railway Trainmen v. Virginia ex rel. Virginia State Bar**, 377 U.S. 1, 84 S. Ct. 1113, 12 L. Ed. 2d 89, in any way supporting the claims of the defendant in this or any other aspect of this case.

III

There remain for consideration certain rulings on evidence.

(a)

The plaintiff called as witnesses Irwin Mott, Miller Wachs, Jeram Kamlani, William G. Short and William Tumath. Each testified that he had executed a will form or trust form or both supplied by the defendant and that he had consulted no attorney in connection with the instruments so executed.

On cross-examination by the defendant's counsel, each witness, after testifying that the instrument was still in existence, was asked whether he was satisfied with the instrument and whether he felt that he had suffered any injury at Dacey's hands. Each question was excluded upon objection by the plaintiff's counsel, who gave no reason for the objection. The defendant's counsel claimed each question on the ground that the complaint alleged an injury to the public as a result of the defendant's un-

authorized practice of law, that the burden of proof of this allegation was on the plaintiff, and that the questions were admissible to negate that allegation.

In the first place the questions were irrelevant. The complaint alleged an injury to the public, not from the fact that Dacey had practiced law in an incompetent manner or to the particular injury of his clients, but from the fact that he had practiced law without having satisfied the uniform, standard, requirements for admission to the bar imposed for the benefit and protection of the public by what is now § 51-80 of the General Statutes. One satisfactorily meeting these requirements, and admitted to the bar, is presumed to be competent to practice law, including practice such as that carried on by Dacey and forming the subject matter of this case. Nor is this all. Quite apart from any consideration of relevancy, the questions were properly excluded, for the reasons hereinafter set forth, under the general rules governing the examination of witnesses.

A ruling on evidence must be tested by the finding. If it is claimed to be erroneous, the finding must contain facts sufficient to disclose the error. Practice Book § 648; **Morgillo v. Evergreen Cemetery Assn.**, 152 Conn. 169, 175, 205 A.2d 368; **Duncan v. Milford Savings Bank**, 134 Conn. 395, 403, 58 A.2d 260. And the finding must also disclose facts from which the materiality of the ruling may be determined. **Casalo v. Claro**, 147 Conn. 625, 630, 165 A.2d 153. As far as appears in the finding, the direct examination of the witnesses had not touched upon their satisfaction with the instruments which they had executed in Dacey's office or whether they had suf-

fered injury as a result of these instruments. **Duncan v. Milford Savings Bank,** supra. Under settled Connecticut law, the scope of the cross-examination, where, as here, there is no attack on the credibility, as such, of the witness, is limited by the scope of the direct examination. **Mendez v. Dorman,** 151 Conn. 193, 198, 195 A.2d 561, and cases cited. The scope of that examination could not be enlarged or otherwise affected by the allegations of the complaint.

If the defendant wished to extend his examination beyond the scope of the matters covered in the direct examination, he should have made the witness his own. **Finch v. Weiner,** 109 Conn. 616, 619, 145 A. 31. And the evidence should have been offered in an orderly way in the course of the defendant's own case. Ibid.; **Shulman v. Shulman,** 150 Conn. 651, 659, 193 A.2d 525. The record indicates no error in the foregoing rulings.

As far as appears, the same rules were applicable to the questions excluded in the cross-examination of the witness Kamlani as to whether he relied on any legal advice given him by the defendant.

(b)

The finding discloses no error in the court's admission, on the plaintiff's redirect examination of Kamlani, of a question as to whether, in conversations with Dacey which had been brought out in Kamlani's cross-examination by the defendant's counsel, Dacey had advised Kamlani as to the tax consequences of a will which Dacey had prepared for the witness.

The basic function of a redirect examination is to enable a witness to explain and clarify relevant matters in his testimony which have been weakened or obscured by his cross-examination. **Bredow v. Woll,** 111 Conn. 261, 264, 149 A. 772; 4 Jones, Evidence (5th Ed.) § 907, p. 1697; 58 Am. Jur., Witnesses, § 562. Although the court has a liberal discretion, it should not ordinarily permit explanation or clarification of collateral matters, immaterial to the outcome of the case, since it would be a mere waste of time. **Sullivan v. Nesbit,** 97 Conn. 474, 477, 117 A. 502. Nor should it ordinarily allow on redirect examination a question covering a matter not touched upon or weakened in the cross-examination. So to do is to allow the redirect to amplify or repeat the direct testimony. **Tappan v. Knox,** 115 Conn. 508, 518, 162 A. 7. But the court had discretion, even on redirect examination, to permit explanation or clarification of evidence given on the direct examination although not touched upon in the cross-examination. **Tappan v. Knox,** supra; **Dennehy v. O'Connell,** 66 Conn. 175, 181, 33 A. 920; **Plumb v. Curtis,** 66 Conn. 154, 167, 33 A. 998. There is nothing in the finding to indictate that the court abused its discretion in admitting the question or that the question covered a matter not weakened or obscured by the cross-examination.

(c)

The court admitted in the plaintiff's case in chief two letters from the defendant to Sara L. Browne. These letters were claimed to tend to show that the defendant had charged Mrs. Browne's son, Malcolm,

for legal services. One letter states, in relevant part, that the defendant prepared "a detailed estate plan for . . . [Malcolm]" and "sent him a modest bill for professional services". It further states: "I expect to be paid for my services." The letter also recalled that the defendant devoted a day to reviewing the financial programs of Sara and Malcolm. He did prepare a will and trust for Malcolm. The letter tends to show that the defendant billed Malcolm for the service of preparing a detailed estate plan. Whether this did or did not include a charge for services in preparing the will and trust does not clearly appear. The other letter makes a short reference to the defendant's "disagrement with Malcolm about the bill." Although the court might well have excluded both letters on the ground that their relevancy was too obscure, we cannot find harmful error in their admission, even though nothing clearly connecting the demand for payment with the preparation of the will or trust, as such, appears in the finding. Whether the defendant directly charged his customers for preparing wills and trusts, as such, is of no consequence since, as previously pointed out, he did it for compensation. Indeed, the public may well be in greater need of protection from the unauthorized practice of law where it seems to be done without charge than where a charge is openly made for the services. In the former situation, the public, through natural cupidity, are the more readily attracted to something which appears to be a "give-away" project or a chance to obtain "something for nothing." Since specific, or direct, unit compensation for the will or trust, as such, was immaterial, and since the compensation to be derived from the

sales of Wellington Fund shares to Malcolm's trustee was provided for in the trust arrangement, the defendant has shown no harmful error in the rulings admitting the exhibits.

(d)

The plaintiff, during its case in chief, offered in evidence an advertisement inserted in The Bridgeport Post for Thursday, April 9, 1964, indicating, inter alia, that the defendant claimed to be an expert on trusts and wills. The defendant objected to its admission as irrelevant to the instant proceeding. The injunctive relief sought was to be granted, if at all, on the situation existing at the time of the trial. The court could properly admit the exhibit under this rule. **Labbadia v. Bailey,** 152 Conn. 187, 192, 205 A.2d 377.

(e)

The other evidential rulings complained of relate to the cross-examination by his own counsel of the defendant, who had been called as a witness by the plaintiff in its case in chief. Since Dacey was a party adverse to the plaintiff, he came within the provisions of General Statutes § 52-178, as construed in **Mendez v. Dorman,** 151 Conn. 193, 197, 195 A.2d 561.

After the plaintiff had completed its statutory direct examination of the defendant, he was cross-examined by his own counsel, who elicited the fact that he had arrangements with certain banks

throughout the state whereby they would act as trustee of a "Dacey trust" at a fee less than the usual 3 percent of the ordinary income. He was then asked what arrangements he had with these banks. Upon inquiry by the court and the plaintiff's counsel as to the materiality of the question, the defendant's counsel claimed that the answer would be indicative of the type of service the defendant was rendering clients "in fulfilling this estate planning scheme that he has developed". The evidence was excluded. As far as it was indicated in the finding, this was another attempt to cross-examine on matters not covered in the direct examination. **Duncan v. Milford Savings Bank,** 134 Conn. 395, 403, 58 A.2d 260. This is not permissible under our rule, which applies regardless of whether the direct examination is the ordinary one or, as was the case here, a statutory direct examination of an adverse party. **Martyn v. Donlin,** 151 Conn. 402, 406, 198 A.2d 700. This being so, the question was also objectionable as an attempt to put in the defendant's case out of order. **Shulman v. Shulman,** 150 Conn. 651, 659, 193 A.2d 525; **Finch v. Weiner,** 109 Conn. 616, 619, 145 A. 31. On each ground the ruling was correct.

The defendant's counsel also attempted to elicit testimony on the cross-examination of the defendant as to his efforts to work out with the officers of the Connecticut Bar Association a less objectionable method of conducting his business. This testimony was claimed on the ground that it would tend to show the defendant's good faith in conducting his business. If this testimony was relevant at all, it does not appear to have been within the scope of the di-

rect examination. Unless it was, it would appear to have been part of the defendant's case in chief. It was properly excluded on the two foregoing grounds.

For the same two reasons, the court was not in error in excluding a question asked the defendant on cross-examination by his own counsel as to whether he was licensed under state or federal law to act as an investment counselor or a salesman of stocks and bonds. This question was claimed by the defendant's counsel on the ground that the answer would tend to show what the defendant's business really was. The finding does not indicate that this subject had been covered in the direct examination, and, consequently, if admissible at all, this testimony would have been part of the defendant's case.

The same ruling was properly made excluding a question asked the defendant on cross-examination by his own counsel as to whether he was registered with the Securities and Exchange Commission.

On the same grounds, the court's exclusion of the defendant's "sales kit", claimed to show his "entire business operation", was proper.

There was no error in the rulings on evidence.

IV

Although the defendant's counsel left no stone unturned in his client's behalf, Dacey's activities present a sordid picture. Dacey issued and distributed the booklet praising his own expertise in devising the trust arrangement comprising the Dacey

trust and the implementing will and advising as to the legal advantages to be gained from adopting this trust arrangement. After clients had been persuaded to adopt the Dacey trust arrangement, Dacey prepared trusts and wills adapted to their needs and desires, providing for large potential profits for himself in the sale of Wellington Fund shares, on which he received a 6 percent commission. For the reasons already pointed out, these activities involved the practice of law and, as such, were in violation of General Statutes § 51-88.

There is no error.

In this opinion the other judges concurred.

APPENDIX B.

OPINION OF THE SUPERIOR COURT, FAIRFIELD COUNTY

MEMORANDUM OF DECISION OF THIM, J.

In this action the plaintiffs, members of the Grievance Committee of the Bar for the County of Fairfield, seek to enjoin the defendants from engaging in certain conduct which the plaintiffs claim constitutes the unlawful practice of law in violation of General Statutes § 51-88 (Rev. 1958).

The pertinent evidence on the primary issue in this case reveals these facts: the defendant Norman F. Dacey is the president and treasurer of the defendant company, Norman F. Dacey and Associates, Inc., as well as its principal shareholder. He is not a member of the Bar of any jurisdiction. However, he has had experience in estate planning and has lectured and written articles of the subject matter. His principal business is that of a dealer in the sale of a mutual fund known as the "Wellington Fund." The defendant corporation promotes the sale of the Wellington Fund to persons seeking investments.

In promoting the sale of the mutual fund, Mr. Dacey advises persons on the investment of their funds by way of creation of trusts and the disposition of their property by way of wills. His plan of the future for his prospects is set forth in a brochure which the defendant company publishes entitled "A Modern Plan for Your Tomorrows" "An Explanation of the Dacey Trust." In this pamphlet Mr. Da-

cey points out how the Dacey Trust can be a practical instrument in planning "Your Estate." Included in the pamphlet by way of appendixes are the following forms of instruments entitled:

"Appendix A — suggested deed of trust suitable for use in establishing a Dacey Trust (for the Guidance of your Attorney)";

"Appendix B — suggested declaration of trust suitable for registration of mutual fund shares so that they will pass directly into a Dacey Trust upon your death (for the Guidance of your attorney)";

"Appendix C — sample of will incorporating balance of one's estate into a Dacey Trust (for the Guidance of your attorney)".

Even though these suggested forms are specifically referred to "for the guidance of your attorney" the defendants do not encourage their prospects who desire to make investments in the Wellington Fund, to consult their attorneys.

The testimony clearly reveals that the defendants prepare wills for persons to whom they sell the Wellington Mutual Fund. Not only do they give opinions which should be rendered by attorneys but they also make arrangements for the selection of the trustees named in trust agreements and the wills.

The petitioners are seeking relief under the provisions of § 51-88 which provides:

> "Practice of law by persons not attorneys. No person who has not been admitted as an attorney under the provisions of Section 51-80 shall practice law or appear as an attorney at law or as attorney and counselor at law for another in any court of record in this state, or make it a business to practice law, or appear as an attorney and counselor at law for another in any such court, or make it a business to solicit employment for a lawyer, or hold himself out to the public as being entitled to practice law, or assume to be an attorney or counselor at law, or assume, use or advertise the title of lawyer, or attorney and counselor at law, or attorney at law, or counselor at law, or attorney or counselor or attorney and counselor or equivalent terms, in such manner as to convey the impression that he is a legal practitioner of law or in any manner advertise that he, either alone or together with any other person or persons, owns, conducts or maintains a law office, or office or place of business of any kind for the practice of law. . . . Any person who violates any provision of this section shall be deemed in contempt of court, and the superior court shall have jurisdiction in equity upon the petition of any member of the bar of this state in good standing or upon its own motion to restrain such violation. . . ."

This section prohibits the practice of law by persons not an attorney either in or out of the court-

room. See Grievance Committee of the Bar of New Haven County v. Payne, 128 Conn. 325.

There is no difficulty in reaching the conclusion that the activities of the defendants constitute the practice of law as is prohibited in § 51-88. In drafting wills and trust agreements and giving advice with respect to these instruments, the defendants engaged in the illegal practice of law. Not only have the defendants violated § 51-88 but the manner of the violation must be condemned for the reason that they have a direct financial involvement in the disposition of their client's estate.

An overweight of legal authorities support the claim that the defendants' activities constitute the practice of law. See memorandum of Judge Klau in this case dated May 28, 1964. The issue is dealt with succinctly by Judge Jennings when sitting as a judge of the Superior Court in the case of **State v. William Thieds,** 4 Conn. Sup. 438, wherein he stated:

> " . . . The drafting of wills has, from time immemorial, been considered an important branch of the practice of law. Since the accused drafted a will and since he is not an attorney, he has done well to plead guilty. The situation is as simple as that. There is much complaint from lawyers and others that legal advice is being given and legal instruments drafted by those lacking that training required of lawyers. The answer to such complaints is to enforce the statute. . . ."

On the trial of this case, the defendants ques-

tioned the wisdom of the enactment of the statute claiming that the law should not be so interpreted as to protect the practice of law for lawyers. Obviously, this law was not enacted for the benefit of lawyers but was passed to protect members of the public from being exposed to legal advice on legal documents from persons who are not qualified to act as legal counsel in the preparation of wills and trust instruments. After reviewing the authorities in the briefs, and in Judge Klau's memorandum, the conclusion is reached that the defendants have violated § 51-88. Therefore, the issues are found for the plaintiffs.

It is quite apparent that the defendants propose to continue to violate the statute if not enjoined. Such activities will continue to expose the public to continuous danger. In light of the circumstances, a permanent injunction may issue enjoining Norman F. Dacey, his associates, agents, servants and employees and Norman F. Dacey and Associates, Inc., its officers, associates, agents, servants and employees to wholly and absolutely refrain and desist directly or indirectly from the following:

a. Engaging in the drafting and/or preparation of wills, trusts, trust agreements and similar documents and/or advising and counseling any person concerning said documents, the effect thereof and the law applicable thereto.

b. Arranging for and supervision of the execution of wills, trust agreements and similar documents and/or advising and counseling any person concerning the legal effect of execution

of said documents and the laws applicable thereto.

c. Advertising and/or soliciting in any manner to suggest to or induce any persons to consult said Norman F. Dacey and/or Norman F. Dacey and Associates, Inc., their officers, associates, agents or servants concerning the preparation and/or execution of wills, trusts and trust agreements or similar documents and/or concerning the legal effects thereof and/or the operation and effect of laws applicable thereto.

Judgment may enter pursuant to this memorandum.

THIM,
Judge.

Filed Jan. 8, 1965.

APPENDIX C.

OPINION OF THE SUPERIOR COURT, FAIRFIELD COUNTY

MEMORANDUM OF DECISION OF KLAU, J. ON DEFENDANT'S MOTION TO DISSOLVE TEMPORARY INJUNCTION.

Upon the verified complaint of the plaintiffs, members of the Grievance Committee of the Bar for the County of Fairfield, to enjoin the defendants from engaging in the unauthorized practice of law, the undersigned, on the 7th of April, 1964, issued a temporary injunction ex parte. The temporary injunction, in substance, enjoined the defendants from engaging in the drafting and/or preparation of wills, trusts, trust agreements and similar documents and/or advising and counseling any person concerning said documents, the effects thereof and the laws applicable thereto; arranging for and supervision of the execution of wills, trust agreements and similar documents and/or advising and counseling any person concerning the legal effect of execution of said documents and the laws applicable thereto; advertising and/or soliciting in any manner to suggest to or induce any persons to consult said Norman F. Dacey and/or Norman F. Dacey and Associates, Incorporated, their officers, associates, agents or servants, concerning the preparation and/or execution of wills, trusts and trust agreements or similar documents and/or concerning the legal effects thereof and/or the operation and effect of laws applicable thereto.

The defendant has filed the present motion to dissolve the temporary injunction. A hearing was held on the defendant's motion and the plaintiff proceeded to offer evidence as though the hearing were held on an order to show cause why a temporary injunction should not be issued. The defendant Dacey also testified in his own behalf. There is not a great deal of dispute with respect to the testimony which was offered. The defendant Norman F. Dacey is the President and Treasurer of the defendant company Norman F. Dacey and Associates, Incorporated as well as its principal stockholder. Mr. Dacey is not a lawyer nor has he been admitted to the Bar in this state or any other jurisdiction. He has had a great deal of experience in estate planning and has lectured and written numerous articles on the subject. His main business is that of broker and dealer in the sale of a mutual fund known as the "Wellington Fund". The main business purpose of the defendant corporation is to promote the sale of the Wellington Fund to persons seeking investments.

The evidence is clear that he advises individuals on the investment of their funds by way of creation of trusts and the disposition of their property by way of wills. The program which he advocates is set forth in a pamphlet which the defendant company publishes and which was introduced into evidence by the defendant entitled "A Modern Plan For Your Tomorrows" "an explanation of the Dacey Trust". In this he points out how the so-called Dacey Trust can be a practical instrument in planning "your estate". Included in the pamphlet by way of appen-

dixes are the following forms of instruments entitled:

"Appendix A — suggested deed of trust suitable for use in establishing a Dacey Trust **(for the Guidance of your attorney)"** (Emphasis added);

"Appendix B — suggested declaration of trust suitable for registration of mutual fund shares so that they will pass directly into a Dacey Trust upon your death **(for the Guidance of your attorney)"**;

"Appendix C — sample of will incorporating balance of one's estate into a Dacey Trust **(for the Guidance of your attorney)"**.

Despite the fact that these suggested forms are specifically referred to **"for the guidance of your attorney"**, the defendants do not encourage their prospects who desire to make investments in the Wellington Fund to consult their attorneys.

The defendant Dacey himself testified he found it impractical to suggest to their clients that they should consult an attorney because it tended to obstruct the consumation of the sale of the specific mutual fund or the preparation and execution of the suggested trust or will. The testimony is clear that the defendant Dacey and the defendant corporation prepare wills and trusts for customers to whom they sell the Wellington Mutual Fund. They also

prepare, execute and advise their customers with respect to legal matters connected with such trusts. Although with respect to all such matters, the defendants' pamphlet instructs the prospect to consult an attorney, nevertheless the defendants themselves make the decisions involved. The defendants make all arrangements for the selection of the trustee named on the trust agreements and wills and file the executed instruments with such trustees. As the defendant Dacey testified, the defendants would not draw these instruments unless the instruments required that investments to be made by the trustees should be made in the Wellington Fund and that the purchases of such mutual fund issue be made through the defendants.

The question arises whether such activities of the defendants constitute the practice of law as is prohibited in Section 51-88 of the General Statutes which provides:

> "Practice of law by persons not attorneys. No person who has not been admitted as an attorney under the provisions of Section 51-80 shall practice law or appear as an attorney at law or as attorney and counselor at law for a other, in any court of record in this state, or make it a business to practice law, or appear as an attorney and counselor at law for another in any such court, or make it a business to solicit employment for a lawyer, or hold himself out to the public as being entitled to practice law, or assume to be an attorney or counselor at law, or assume, use or advertise the title of lawyer, or attorney and counselor at law, or attorney at

> law, or counselor at law, or attorney or counselor or attorney and counselor or equivalent terms, in such manner as to convey the impression that he is a legal practitioner of law or in any manner advertise that he either alone or together with any other person or persons, owns, conducts or maintains a law office, or office or place of business of any kind for the practice of law." . . . "Any person who violates any provision of this section shall be deemed in contempt of court, and the superior court shall have jurisdiction in equity upon the petition of any member of the bar of this state in good standing or upon its own motion to restrain such violation."

The statute forbids the practice of law by persons not an attorney either in or out of a court room. See **Grievance Committee of the Bar of New Haven County v. Payne,** 128 Conn. 325.

A great many cases have been cited on this subject by the plaintiffs in their brief, and there is no need to repeat them here. The subject can be best summed up in the words of Judge Jennings when sitting as a judge of the Superior Court in the case of **State v. William Thieds,** 4 Conn. Sup. 438 (1937):

> "This case will have been of great value if it calls attention to the existence of Cumulative Supplement 1628c. By the provisions of this statute the practice of law by others than duly admitted attorneys is forbidden. The drafting of wills has, from time immemorial, been considered an important branch of the practice of law. Since the accused drafted a will, and since

he is not an attorney, he has done well to plead guilty. The situation is as simple as that. There is much complaint from lawyers and others that legal advice is being given and legal instruments drafted by those lacking that training required of lawyers. The answer to such complaints is to enforce the statutes. Precedent is hardly required."

See 111 **A.L.R.** 19, 125 **A.L.R.** 1173, 151 **A.L.R.** 781; **People v. People's Trust Co.,** 180 App. Div. 494, 167 N.Y.S. 767 (1917); **Childs v. Smeltzer,** 315 Pa. 9, 171 A. 883 (1934); **Judd v. City Trust and Savings Bank,** 133 Ohio St. 81, 12 N.E. 2nd 288 (1937) and **Clark v. Reardon,** 231 Mo. App. 666, 104 S. W. 2nd 407, 410 (1937).

The fact that the defendant claims that he uses only a form will not be a bar to enjoining him. Indeed more than a form is used here. Legal decisions are made by the defendants in determining the language of the instrument, where alternative choices are available. **State v. Schmitt,** 174 Kan. 581 P. 2nd 288 (1953); **Board of Commissioners of the Utah State Bar v. Glenn E. Edgar,** (unpublished, Dis. Court of Salt Lake County, Utah, Civil No. 125 723 (1964).

Even admitting that defendants have the qualifications to perform work in the estate planning field, such experts in that one area are no substitutes for the broad legal perspective necessary when one prepares, drafts, and gives advice on instruments of such consequence as wills and trust agreements. A Missouri court, in explaining why a complete legal

background was necessary to prepare a will or trust agreement put the matter this way:

> "The body of the law is an intricate set or rules and regulations designed by society for the regulation of individuals and corporations in their relation with society and with each other. A knowledge of it can only be gained from a study of the common law, of the Constitution, of the statutes, and of the decisions of the Courts, construed in the light of the particular facts and circumstances then before the court and the real objective sought to be maintained thereby. It is a subject of too vital importance to be left to any but those who have prepared themselves by special study and have attained some standard of knowledge therein, as well as an ethical consciousness of their obligation to the public and to the client. This standard must be met under rules prescribed by public authority; and only after a license has been granted can one legally engage in the practice of law. Such restrictions are not primarily for the benefit of lawyers, but, rather for the benefit of society." **Clark v. Reardon,** 231 Mo. App. 666, 104 S.W. 2nd 407, 410 (1937).

The underlying reasons stated by the authorities for holding that the preparation and drafting of wills and trust agreements constitute the practice of law are two-fold: firstly, there is a recognition that these instruments are complex and secure important legal relationships and that they therefore require for their formulation one schooled in all phases of the law and not a party with general knowledge of only one particular field; and, secondly, it is repeat-

edly stated that the preparation and drafting of wills and trust agreements especially necessitates an attorney-client relationship where the attorney gives undivided allegiance to his client's interests, to the point where the misconduct of the attorney in this regard can be supervised by the court.

Furthermore, no supervisory body such as the Grievance Committee exists to supervise the conduct of the defendants. The very reason which the courts have given from the beginning in insisting that wills and trust agreements may be prepared only by attorneys require the court in this instance to enjoin the defendants from conducting those of their activities which constitute the practice of law.

The defendant's main argument or chief arguments in support of those motions to dissolve the temporary injunction are that the plaintiffs have not shown that they will suffer irreparable damage if the injunction is not issued, and further, that a temporary injunction should not be issued before a final hearing in the case.

The plaintiffs, as members of the Grievance Committee of the Bar of Fairfield County, may not personally suffer any irreparable damage if a temporary injunction is not issued. However, the plaintiffs as members of the Bar are authorized by Section 51-88 of the General Statutes to institute this action to enjoin the defendants from engaging in the practice of law. It is the illegality of the defendants' action with respect to the preparation, execution and counselling with regard to trusts and wills which is sought to be enjoined. It is the harm which results from

such unauthorized activities which is to be averted. There may be a gray area in which the defendant Dacey's advice with respect to estate planning may not constitute the practice of law, but his activities and that of his company as disclosed by the testimony at the hearing with respect to wills and trusts drafted by them and executed under their specifications are far outside such an area and within the zone prohibited by the statute.

Since the plaintiffs will probably prevail at the trial on this issue and the defendants propose to continue their practice set forth herein, if not restrained, and the defendant Dacey himself testified that he drafts approximately thirty-five wills or trusts during the course of a year, we are not dealing with a singularly isolated case but a continued violation of the statute. It is exposing the public to danger. The temporary injunction is needed to prevent the defendants from implementing their investment business by practicing law.

The temporary injunction signed on April 7, 1964, by the undersigned is continued modified, however, to exclude subparagraphs (a) and (e) thereof since the remaining sub paragraphs, (b), (c) and (d) contain all that is specifically required to prevent the defendants from practicing law pending further order of the Court.

The defendant's motion to dissolve the temporary injunction is denied, and the temporary injunction is continued except as herein modified.

KLAU,
Judge.

APPENDIX D.

JUDGMENT OF SUPERIOR COURT, FAIRFIELD COUNTY.

This action, by writ and verified complaint dated April 6, 1964, claiming that the defendants be adjudged in contempt of court pursuant to Section 51-88 of the Connecticut General Statutes (1958 Revision) and that an injunction issue restraining the defendants, and their officers, associates, agents, servants and employees from engaging in the illegal and unauthorized practice of law came to Honorable Joseph Klau, a Judge of the Superior Court, on April 6, 1964, on plaintiffs' motion for an immediate temporary injunction, where said Honorable Judge Klau granted plaintiffs' motion and when the defendants Norman F. Dacey and/or Norman F. Dacey and Associates, Incorporated, their officers, associates, agents, servants and employees were commanded and joined from the following:

(a) Advising and/or counseling any person concerning wills, trusts and estates and the laws applicable thereto.

(b) Engaging in the drafting and/or preparation of wills, trusts, trust agreements and similar documents and/or advising and counseling any person concerning said documents, the effects thereof and the laws applicable thereto.

(c) Arranging for and supervision of the execution of wills, trust agreements and similar documents and/or advising and counseling any person concern-

ing the legal effect of execution of said documents and the laws applicable thereto.

(d) Advertising and/or soliciting in any manner to suggest to or induce any persons to consult said Norman F. Dacey and/or Norman F. Dacey and Associates, Incorporated, their officers, associates, agents or servants, concerning the preparation and/or execution of wills, trusts and trust agreements or similar documents and/or concerning the legal effects thereof and/or the operation and effect of laws applicable thereto.

(e) Representing or holding out to any persons in any manner that said Norman F. Dacey and/or Norman F. Dacey and Associates, Incorporated, their officers, associates, agents and servants, are willing and able to consult, advise and counsel regarding wills, trusts and estates and the execution of documents relating thereto and the operation and effect of laws applicable thereto.

This action thence came to this Court on the first Tuesday of May, 1964, when the parties appeared and thence to May 29, 1964 when, after the parties were heard on the defendants' motion to dissolve the temporary injunction, the aforesaid temporary injunction was modified and the defendants Norman F. Dacey and/or Norman F. Dacey and Associates, Incorporated, their officers, associates, agents, servants and employees were commanded and enjoined from the following:

(a) Engaging in the drafting and/or preparation of wills, trusts, trust agreements and similar

documents and/or advising and counseling any person concerning said documents, the effects thereof and the laws applicable thereto.

(b) Arranging for and supervision of the execution of wills, trust agreements and similar documents and/or advising and counseling any person concerning the legal effect of execution of said documents and the laws applicable thereto.

(c) Advertising and/or soliciting in any manner to suggest to or induce any persons to consult said Norman F. Dacey and/or Norman F. Dacey and Associates, Incorporated, their officers, associates, agents or servants, concerning the preparation and/or execution of wills, trusts and trust agreements or similar documents and/or concerning the legal effects thereof and/or the operation and effect of laws applicable thereto.

This action then came to this Court at the present time when this Court, having heard the parties, finds the issues for the plaintiffs and that the defendants are engaging in the unauthorized practice of law in violation of Title 51 Section 88 of The Connecticut General Statutes, and therefore permanently commands and enjoins the defendants Norman F. Dacey and/or Norman F. Dacey and Associates, Incorporated, from the following:

(a) Engaging in the drafting and/or preparation of wills, trusts, trust agreements and similar documents and/or advising and counseling any person concerning said documents, the effects thereof and the laws applicable thereto.

(b) Arranging for and supervision of the execution of wills, trust agreements and similar documents and/or advising and counseling any person concerning the legal effect of execution of said documents and the laws applicable thereto.

(c) Advertising and/or soliciting in any manner to suggest to or induce any persons to consult said Norman F. Dacey and/or Norman F. Dacey and Associates, Incorporated, their officers, associates, agents or servants, concerning the preparation and/or execution of wills, trusts and trust agreements or similar documents and/or concerning the legal effects thereof and/or the operation and effect of laws applicable thereto.

THIM,
Judge.

APPENDIX E.

SECTION 51-88 OF THE GENERAL STATUTES OF CONNECTICUT (REV. 1958).

"Sec. 51-88. Practice of Law by Persons Not Attorneys. No person who has not been admitted as an attorney under the provisions of section 51-80 shall practice law or appear as an attorney at law or as attorney and counselor at law for another, in any court of record in this state, or make it a business to practice law, or appear as an attorney and counselor at law for another in any such court, or make it a business to solicit employment for a lawyer, or hold himself out to the public as being entitled to practice law, or assume to be an attorney or counselor at law, or assume, use or advertise the title of lawyer, or attorney and counselor at law, or attorney at law, or counselor at law, or attorney or counselor or attorney and counselor or equivalent terms, in such manner as to convey the impression that he is a legal practitioner of law or in any manner advertise that he, either alone or together with any other person or persons, owns, conducts or maintains a law office, or office or place of business of any kind for the practice of law. Any person who violates any provision of this section shall be fined not more than two hundred and fifty dollars or imprisoned not more than two months or both. Any person who violates any provision of this section shall be deemed in contempt of court, and the superior court shall have jurisdiction in equity upon the petition of any member of the bar of this state in good standing or upon its own motion to restrain such violation. Nothing herein

contained shall be construed as prohibiting a town clerk from preparing or drawing deeds, mortgages, releases, certificates of change of name and trade name certificates which are to be recorded or filed in the town clerk's office in the town in which such town clerk resides or as prohibiting any person from practicing law or pleading at the bar of any court of this state in his own cause."

APPENDIX F.

PERTINENT PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES.

AMENDMENTS

ARTICLE I.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

ARTICLE V.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life, or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

ARTICLE XIV.

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction

thereof, are citizens of the United States and of tne State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX G.

MOTION TO REARGUE.

The defendants in the above-entitled action respectfully move this Court for permission to reargue the following issues for the reasons hereinafter set forth:

1. In Section IV of the opinion the Court describes the activities of the defendants as presenting a "sordid picture." We submit that the evidence in the case does not support a conclusion of this nature. The connotations of this phrase exceed in harshness a proper appraisal of defendants' conduct. While the Court by its decision has determined defendants' conduct was illegal under the law, we respectfully submit that the facts elicited from the finding do not fall into the category of a "sordid picture." Notwithstanding that the defendants **might** ultimately benefit from a purchase by the trustee under the so-called Dacey trust of mutual fund shares in the form of commissions from such sales, it is difficult to differentiate their position from that of a bank which, in the process of advertising its services as a trustee, distributes printed information, indulges in oral discussions with clients, and offers to assist personal counsel for clients and to act as a corporate trustee under an **inter-vivos** or testamentary trust. Banks engage in these activities for the express purpose of earning fees as trustees. They are particularly interested in having themselves named as trustees for this reason, and it is only for this reason that they offer the information to their clients. Even though such activity is motivated by a monetary return, it

would be difficult to criticize it on that basis. Commissions are legitimately earned by corporate trustees, and the defendants also would be legitimately earning commissions on a similar basis. The addition of the fact that this Court has held that the defendants have indulged in the unauthorized practice of law would not make this conduct sordid, anymore than the unauthorized conduct of the banks in **State Bar Association v. Connecticut Bank & Trust Co.** cases (145 Conn. 222 and 146 Conn. 556) could be properly thus designated.

The press has apparently seized upon this phrase in the opinion, and in many areas of the country, according to defendants, are using it as a description of defendant Dacey's character and reputation. We would urge the Court to consider that defendants' conduct, as the case discloses, was at no time furtive or dishonest; that clients were fully informed of his status as a layman; that in fact the case does not disclose any evidence of dissatisfaction on the part of any witnesses with defendant Dacey's conduct relative to wills and trusts, or his honesty. Defendant has enjoyed an excellent reputation for honesty and integrity all his life, and this reputation was not an issue in the case.

The use of this phrase in the opinion impugns defendant Dacey's reputation for honesty which has not been questioned. The bone of contention — the unauthorized practice of law — is the basic dispute between plaintiffs and defendants, and finding this issue in favor of the plaintiffs does not support the use of this phrase, however unauthorized defendants' conduct may be viewed under the statute.

The bar against the defendants should be limited to the scope of the injunction which the Court has upheld. It should not be extended beyond the injunction so as to imply that the extreme of definition of the word "sordid" in Webster's International Dictionary, Third Edition, should be visited upon him in his business relations and his daily life with others. We submit that the facts before the Court do not warrant the stigma attached to defendants by this phrase. Its use as part of the permanent records of this Court's decisions would be a far more severe and damaging judgment than the case invites.

We respectfully urge the court to delete or change this phrase to some other language which in its opinion may appear appropriate.

2. In Section II (a) of the Opinion, this Court concluded that Section 51-88 was not unconstitutionally vague as to these defendants in violation of the due process clause of the 14th Amendment to the federal constitution. The court stated that "an all-inclusive definition (of the phrase "practice of law") is difficult, if not impossible, of formulation." The Court continued:

> "There is nothing to indicate that the particular legal activities which are involved in this case are of such a character that they are not clearly embraced in the phrase 'practice of law.' "

The Court then concluded that, as to this defendant, Section 51-88 is not unconstitutionally vague.

It is respectfully submitted that this Court, deter-

mining whether or not a statute is so vague as to violate the due process clause of the 14th Amendment, cannot look with hindsight upon the activities of the defendants, conclude that such activities violate the statute, and therefore conclude that "the statute is not unconstitutionally ambiguous in its impact on. . . (this) defendant."

It is submitted that this Court has incorrectly applied the rule set forth in **Lanzetta v. New Jersey,** 306 U.S. 451, 453, 59 S. Ct. 618, 83 L. ed 888 and **Connolly v. General Construction Co.,** 269 U.S. 385, 391, 46 S. Ct. 126, 70 L. ed 322. Once this Court concluded that Section 51-88 was vague, then the mere fact that the specifications of the charge against these defendants are clear does not cure the defect in the statute itself.

It is therefore respectfully submitted that the defendants be granted permission to reargue the issue of the constitutionality of Section 51-88, which was set forth in pages 29-32 of the Defendants' Brief and discussed in Section II (a) of the opinion of this Court, **Grievance Committee of the Bar of Fairfield County v. Norman F. Dácey, et al.,** Vol. 28 Conn. L.J. No. 5, P. 3, 7-8 (August 2, 1966).

3. In Section II (b) of the opinion, Conn. L.J. p. 8, the Court discussed in part defendants' claim that the scope of the injunction abridged their right of free speech accorded them under the first amendment to the federal constitution.

It is respectfully submitted that the following is-

sues raised by the defendants' (see Main Brief, pages 32-34), were not discussed by the Court:

(a) As to subsection (a) of the injunction, the Court has not clarified the scope of the terms "advising" or "counseling." Does this preclude the defendants from discussing generally wills and trusts, and the laws applicable thereto? Does the injunction prevent them from lecturing on radio or television?

(b) As to subsection (b), the injunction prohibits **inter alia,** "arranging for" or "supervising" the execution of a will or trust. Does the Court, by failing to discuss this issue, imply that the defendant Dacey, as a Notary Public, cannot supervise the execution of a will or that he cannot refer a client to an attorney?

(c) As to subsection (c) of the injunction, does the Court mean that the defendants cannot advertise that they are estate planners and competent to discuss, in general terms only, estate planning?

We submit that the silence of the opinion on these points gives greater scope to the injunction than it should have.

It is respectfully submitted that the defendants be granted permission to reargue the issue set forth above.

WHEREFORE, the defendants respectfully move

that the Court grant the permission to reargue their case.

The Defendants,

By GEORGE A. SADEN,

By STURGES N. LAROS.

DECISION OF SUPREME COURT OF THE STATE OF CONNECTICUT ON DEFENDANTS' MOTION TO REARGUE.

September 21, 1966
The motion by the defendants to reargue is denied.

By the Court,
King,
C. J.

APPENDIX H.

MINNESOTA.

Minnesota Statutes Ann., Sec. 481.05 (Rev. 1966)
"481.05 **Unauthorized practice of law**

Subdivision 1. **Prohibitions.** It shall be unlawful for any person or association of persons, except members of the bar of Minnesota admitted and licensed to practice as attorneys at law, to appear as attorney or counselor at law in any action or proceeding in any court in this state to maintain, conduct, or defend the same, except in his own behalf as a party thereto in other than a representative capacity, or, by word, sign, letter, or advertisement, to hold out himself or themselves as competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or counseling in law or acting as attorney or counselor at law, or in furnishing to others the services of a lawyer or lawyers, or, for a fee or any consideration, to give legal advice or counsel, perform

for or furnish to another legal services, or, for or without a fee or any consideration, to prepare, directly or through another, for another person, firm or corporation, any will or testamentary disposition or instrument of trust serving purposes similar to those of a will, or, for a fee or any consideration, to prepare for another person, firm, or corporation, any other legal document, except as provided in subdivision 3.

Subd. 2. **Corporations.** No corporation, organized for pecuniary profit by or through its officers or employees or any one else, shall maintain, conduct, or defend, except in its own behalf when a party litigant, any action or proceeding in any court in this state, or shall, by or through its officers or employees or any one else, give or assume to give legal advice or counsel or perform for or furnish to another person or corporation legal services; or shall, by word, sign, letter, or advertisement, solicit the public or any person to permit it to prepare, or cause to be prepared, any will or testamentary disposition or instrument of trust serving purposes similar to those of a will, or hold itself out as desiring or willing to prepare any such document, or to give legal advice or legal services relating thereto or to give general legal advice or counsel, or to act as attorney at law or as supplying, or being in a position to supply, the services of a lawyer or lawyers; or shall to any extent engage in, or hold itself out as being engaged in, the business of supplying services of a lawyer or lawyers; or shall cause to be prepared any person's will or testamentary disposition or instrument of trust serving purposes similar to those of a will, or

any other legal document, for another person, firm, or corporation, and received, directly or indirectly, all or a part of the charges for such preparation or any benefits therefrom; or shall itself prepare, directly or through another, any such document for another person, firm, or corporation, except as provided in subdivision 3.

Subd. 3. **What permitted.** The foregoing shall not prohibit any one from drawing, without charge for so doing, any document to which he, or a person whose employee he is or a firm whereof he is a member or a corporation whose officer or employee he is, is a party, except another's will or testamentary disposition or instrument of trust serving purposes similar to those of a will; and shall not prohibit a person from drawing a will for another in an emergency wherein the imminence of death leaves insufficient time to have the same drawn and its execution supervised by a licensed attorney at law; and shall not prohibit anyone, acting as broker for the parties or agent of one of the parties to a sale or trade or lease of property or to a loan, from drawing or assisting in drawing, with or without charge therefor, such papers as may be incident to such sale, trade, lease, or loan; and shall not prohibit any insurance company from causing to be defended, or from offering to cause to be defended through lawyers of its selection the insureds in policies issued or to be issued by it, in accordance with the terms of such policies; and shall not prohibit one such licensed attorney at law from acting for several common-carrier corporations or any of its subsidiaries pursuant to arrangement between said corporations; and shall

not prohibit any bona fide labor organization from giving legal advice to its members on matters arising out of their employment; and shall not prohibit any person from conferring or cooperating with a licensed attorney at law of another in preparing any legal documents, if such attorney is not directly or indirectly, in the employ of such person or of any person, firm, or corporation represented by such person; and shall not prohibit any licensed attorney at law of Minnesota, who is an officer or employee of a corporation, from drawing, for or without compensation, any document to which the corporation is a party or wherein it is interested personally or in a representative capacity, except wills or testamentary dispositions or instruments of trust serving purposes similar to those of a will, but any charge made for legal work connected with preparing and drawing such document shall not exceed the amount paid to and received and retained by such attorney, and such attorney shall not, directly or indirectly, rebate the same to or divide the same with such corporations; and shall not prohibit any person or corporation from drawing, for or without a fee, farm or house leases, notes, mortgages, chattel mortgages, bills of sale, deeds, assignments, satisfactions or any other conveyances except testamentary dispositions and instruments of trust; and shall not prohibit a licensed attorney at law of Minnesota from rendering to a corporation legal services to itself at the expense of one or more of its bona fide principal stockholders by whom he is employed and by whom no compensation is, directly or indirectly, received for such services; and shall not prohibit any person or corporation engaged in the business of making col-

lections from engaging or turning over to an attorney at law for the purpose of instituting and conducting suit or making proof of claim of a creditor in any case in which the attorney at law received the entire compensation for such work; and shall not prohibit any regularly established farm journal or newspaper, devoted to general news, from publishing a department of legal questions and answers thereto, made by a licensed attorney at law, if no such answer be accompanied or at any time preceeded or followed by any charge for such answer, any disclosure of any name of the maker of any answer, any recommendation of or reference to any one to furnish legal advice or services, or by any legal advice or service for such periodical or any one connected with it or suggested by it, directly or indirectly.

Subd. 4. **Mortgage foreclosure fees.** It shall be unlawful to exact, charge or receive any attorney's fee for the foreclosure of any mortgage, unless the foreclosure is conducted by a licensed attorney at law of Minnesota and unless the full amount charged as attorney's fee is actually paid to and received and retained by such attorney, without being, directly or indirectly, shared with or rebated to any one else; and it shall be unlawful for any such attorney to make any showing that he has received such a fee unless he has received the same or to share with or rebate to any other person, firm, or corporation such fee, or any part thereof, received by him; but such attorney may divide such fee with another licensed attorney at law maintaining his own place of business and not an officer or employee of the foreclosing party, if such attorney has assisted in

performing the services for which the fee is paid, or resides in a place other than that where the foreclosure proceedings are conducted and has forwarded the case to the attorney conducting such foreclosure.

Subd. 5. **Corporate fiduciary agents.** It shall be unlawful for any corporation, appearing as executor, administrator, guardian, trustee, or other representative, to do the legal work in any action, probate proceeding or other proceeding in any court in this state, except through a licensed attorney at law of Minnesota maintaining his own place of business and not an officer or employee of such executor, administrator, guardian, trustee, or representative. No attorney's fee shall be charged or paid or received in any such case, unless actually paid to and received and retained by such an attorney at law maintaining his own place of business and not an officer or employee of such executor, administrator, guardian, trustee, or representative; and it shall be unlawful for such attorney to represent in any manner that he has received any sum as a fee or compensation unless the same has been actually received by him or, directly or indirectly, to divide with or rebate to any person, firm, or corporation any part of any such fee or consideration received by him in any such case; but such attorney may divide such fee with another licensed attorney at law maintaining his own place of business and not an officer or employee of such executor, administrator, guardian, trustee, or other representative, if such attorney has assisted in performing the services for which the fees are paid, or resides in a place other than that where the

action or proceedings are conducted and has forwarded the case to the attorney conducting the action or proceedings.

Subd. 6. **Attorneys of other states.** Any attorney or counselor at law residing in any other state or territory wherein he has been admitted to practice law, who shall attend any term of the supreme or district court of this state for the purpose of trying or participating in the trial or proceedings of any action or proceedings there pending, may, in the discretion of the court before which he appears in such action or proceeding, be permitted to try, or participate in the trial or proceedings in, such action or proceeding, without being subject to the provisions of this section, other than those set forth in subdivision 2.

Subd. 7. **Lay assistance to attorneys.** Nothing herein contained shall be construed to prevent a corporation from furnishing to any person lawfully engaged in the practice of law, such information or such clerical service in and about his professional work as, except for the provisions of this section, may be lawful, provided, that at all times the lawyer receiving such information or such services shall maintain full, professional and direct responsibility to his clients for the information and services so received.

Subd. 8. **Penalty; injunction.** Any person or corporation, or officer or employee thereof, violating any of the foregoing provisions shall be guilty of a misdemeanor; and, upon conviction thereof, shall be punished as by statute provided for the punishment

of misdemeanors. It shall be the duty of the respective county attorneys in this state to prosecute violations of this section, and the district courts of this state shall have sole original jurisdiction of any such offense under this section.

In lieu of criminal prosecution above provided for, such county attorney or the attorney general may, in the name of the State of Minnesota, or in the name of the state board of law examiners, proceed by injunction suit against any violator of any of the provisions above set forth to enjoin the doing of any act or acts violating any of said provisions.

APPENDIX I.

ALABAMA.

Alabama Code, tit. 46, §42 (Recomp. 1958).

"§42 **Who may practice as attorneys.** — Only such persons as are regularly licensed have authority to practice law. For the purposes of this article, the practice of law is defined as follows: Whoever, (a) in a representative capacity appears as an advocate or draws papers, pleadings or documents, or performs any act in connection with proceedings pending or prospective before a court or a justice of the peace, or a body, board, committee, commission or officer constituted by law or having authority to take evidence in or settle or determine controversies in the exercise of the judicial power of the state or any subdivision thereof; or (b) for a consideration, reward or pecuniary benefit, present or anticipated, direct or indirect, advises or counsels another as to secular law, or draws or procures or assists in the drawing of a paper, document or instrument affecting or relating to secular rights; or, (c) for a consideration, reward or pecuniary benefit, present or anticipated, direct or indirect, does any act in a representative capacity in behalf of another tending to obtain or secure for such other the prevention or the redress of a wrong or the enforcement or establishment of a right; or, (d) as a vocation, enforces, secures, settles, adjusts or compromises defaulted, controverted or disputed accounts, claims or demands between persons with neither of whom he is in privity or in the relation of employer and employee in the ordinary sense: is practicing law.

Nothing in this section shall be construed to prohibit any person, firm or corporation from attending to and caring for his or its own business, claims or demands; nor from preparing abstracts of title, certifying, guaranteeing or insuring titles to property, real or personal, or an interest therein, or a lien or encumbrance thereon, but any such person, firm or corporation engaged in preparing abstracts of title, certifying, guaranteeing or insuring titles to real or personal property are prohibited from preparing or drawing or procuring or assisting in the drawing or preparation of deeds, conveyances, mortgages and any paper, document or instrument affecting or relating to secular rights, which acts are hereby defined to be an act of practicing law, unless such person, firm or corporation shall have a proprietary interest in such property, however, any such person, firm or corporation so engaged in preparing abstracts of title, certifying, guaranteeing or insuring titles shall be permitted to prepare or draw or procure or assist in the drawing or preparation of simple affidavits or statements of fact to be used by such person, firm or corporation in support of its title policies, to be retained in its files and not to be recorded. Any person, firm or corporation who is not a regularly licensed attorney who does an act defined in this article to be an act of practicing law, is guilty of a misdemeanor, and on conviction must be punished as provided by law. And any person, firm or corporation who conspires with, aids and abets, another person, firm or corporation in the commission of such misdemeanor must, on conviction, be punished as provided by law."

APPENDIX J

MEMORANDUM DENYING MOTION UNDER PARAGRAPH 4 RULE 12 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES

The appeal in the above entitled case was presented to the Supreme Court of Connecticut on the printed record, briefs of counsel and appendices to briefs, together with certain exhibits not printed in the record. No question as to the authenticity of the exhibits was, or now is, raised.

The undersigned, as presiding judge of the Connecticut Supreme Court, is not of the opinion that "it . . . (is) necessary or proper . . . that original papers of any kind should be inspected in . . . (the Supreme Court of the United States) in lieu of copies . . .".

Accordingly, the motion of the defendant dated January 25, 1967, seeking action by the undersigned under the provisions of paragraph 4 of Rule 12 of the Rules of the Supreme Court of the United States is denied.

Signed and dated at Hartford, Connecticut, this 30th day of January, 1967.

(S) JOHN H. KING
Chief Justice
Supreme Court of Connecicut

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IN THE

Supreme Court of the United States

No. 1049, OCTOBER TERM, 1966

NORMAN F. DACEY, *et al.*,

Appellants,

—v.—

GRIEVANCE COMMITTEE OF THE BAR OF FAIRFIELD COUNTY,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CONNECTICUT

MOTION TO DISMISS UNDER RULE 16

DAVID GOLDSTEIN
JACOB D. ZELDES
CHARLES M. NEEDLE
955 Main Street
Bridgeport, Conn.
Counsel for Appellee

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IN THE

Supreme Court of the United States

No. 1049, OCTOBER TERM, 1966

NORMAN F. DACEY, *et al.*,

Appellants,

—v.—

GRIEVANCE COMMITTEE OF THE BAR OF FAIRFIELD COUNTY,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CONNECTICUT

MOTION TO DISMISS UNDER RULE 16

Motion to Dismiss

The appellee respectfully prays that the appellants' appeal be dismissed for want of a substantial federal question.

Statement of Case

The appellant, Norman F. Dacey, is the president and treasurer of the appellant corporation, Norman F. Dacey

and Associates, Inc., as well as its principal shareholder (F. 2, R. 22).[1] He is not a member of the Bar of any jurisdiction (F. 3, R. 22). His principal business is that of a dealer in the sale of a mutual fund known as the "Wellington Fund" (F. 4, R. 22).

The appellant corporation has a contract with the Wellington Fund, under which the appellant corporation receives a substantial commission on every share of Wellington Fund sold through its offices (F. 109-111, R. 31). If the appellant corporation sells $1000 of Wellington Fund, it receives a commission of $60 (F. 111, R. 32).

In promoting the sale of Wellington Fund, the appellants advertise and solicit to induce members of the general public to consult with them (F. 129, R. 34). When a prospective customer consults with the appellant Dacey or one of his associates, Dacey or his associates discusses with the customer the manner in which he should distribute his property after his death (F. 138, R. 35). They suggest that the customer execute a will and trust agreement, but they do not suggest that he consult an attorney about these matters, for the appellants themselves draft and prepare wills and trust agreements and advise with respect to the operation and legal effect of these instruments (F. 127, R. 34; F. 137, R. 35; F. 150, R. 36).

The appellants suggest to the customer what provisions should be encompassed in his will and trust, advise him as to the legal effect and the laws relating to these instruments, especially the Federal Estate Tax and the Connecticut Inheritance Tax, and give him specific advice

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[1] References are indicated as follows:
References to the numbered paragraphs of the Finding . . . (F.);
References to the numbered pages of the Record . . . (R.).

regarding the tax consequences of the various provisions in the will and trust (F. 126-127, R. 34; F. 139, R. 35; F. 141, R. 35; F. 145, R. 36). The appellants then draft and type the will and trust agreement, arrange for the execution of the instruments, advise the customer as to the proper manner to execute them and, in general, supervise the execution—all of which takes place in the offices of the appellants (F. 128, R. 34; F. 140, R. 35; F. 142, R. 36; F. 148, R. 36). If the customer has any questions as to the relative advantages and disadvantages of the provisions in the will and trust, the appellants readily give him answers (F. 146-147, R. 36).

The appellants even suggest the bank to be named as executor under all the wills and as trustee under all the trust agreements, and in some of the trust agreements drafted by the appellant Dacey, he is named as co-trustee (F. 117, R. 33; F. 149, R. 36). Upon the appellants' advice, the wills and trust agreements are all deposited in the bank so named (F. 122, R. 33; F. 149, R. 36).

Since the members of the public for whom the appellants draft wills and trust agreements are never represented by attorneys, they rely on the advice and guidance of the appellants with respect to the preparation, execution, legal effect and operation of such instruments (F. 144, R. 36; F. 150, R. 36).

The primary objective and motivation of the appellants in drafting wills and trusts for members of the public is to sell them shares of Wellington Fund (F. 134, R. 35). All of the wills and trusts, therefore, have the same general scheme, although deviations are made in many instances from the forms generally used (F. 119, R. 33). The individual's entire estate, including the proceeds from

his life insurance, pass to the trust and under the terms of the trust agreement, all of the assets are converted into shares of Wellington Fund, which the trustee is instructed to purchase through the offices of the appellants (F. 112-115, R. 32; F. 130-132, R. 34-35). Consequently, the appellants obtain a commission whenever a trust receives the assets of an individual's estate and the trustee purchases Wellington Fund through the appellants' offices pursuant to the trust agreement drafted by the appellants (F. 112, R. 32). The trustee has no choice—he must convert all of the assets into Wellington Fund (R. 112-115, R. 32). Indeed, the appellants will not draft a will or trust agreement for anyone who does not adopt this scheme (F. 116, R. 32-33; F. 135, R. 35). The appellants, therefore, have a direct financial involvement in the disposition of their client's estate (F. 133, R. 35).

The appellants feared that if they advised their prospective customers to consult an attorney before he committed himself to Wellington Fund through the will and trust, they would be obstructed in the preparation of these instruments and would therefore lose a sale (F. 136, R. 35). Accordingly, the appellants did not encourage their prospective customers to consult an attorney (F. 123, R. 33).

The appellants have apparently been very successful in achieving their objective of selling Wellington Fund, for already several millions of dollars have been invested in Wellington Fund through the appellants pursuant to the wills and trust agreements which they have drafted (F. 121, R. 33).

The appellants also billed clients for the legal services which they rendered in drafting wills and trusts, and

even sued them if they didn't pay (F. 100, R. 30-31; F. 104, R. 31).

The appellee, the Grievance Committee of the Bar for the County of Fairfield, instituted this action pursuant to §51-88 of the General Statutes to enjoin the appellants from engaging in the unauthorized practice of law (R. 1-3). The court below found the issues for the appellee and issued a permanent injunction restraining the appellants from engaging in the specific activities which the court concluded constituted the unauthorized practice of law (R. 8-10). The appellants appealed to the Connecticut Supreme Court which affirmed the judgment of the Superior Court.

Statute Involved

Section 51-88 of the General Statutes of Connecticut (1958 Revision) which reads as follows:

> "*Practice of Law by Persons not Attorneys.* No person who has not been admitted as an attorney under the provisions of section 51-80 shall practice law or appear as an attorney at law or as attorney and counselor at law for another, in any court of record in this state, or make it a business to practice law, or appear as an attorney and counselor at law for another in any such court, or make it a business to solicit employment for a lawyer, or hold himself out to the public as being entitled to practice law, or assume, use or advertise the title of lawyer, or attorney and counselor at law, or attorney at law, or counselor at law, or attorney or counselor or attorney and counselor or equivalent terms, in such manner

as to convey the impression that he is a legal practitioner of law or in any manner advertise that he, either alone or together with any other person or persons, owns, conducts or maintains a law office, or office or place of business of any kind for the practice of law. Any person who violates any provision of this section shall be fined not more than two hundred and fifty dollars or imprisoned not more than two months or both. Any person who violates any provision of this section shall be deemed in contempt of court, and the superior court shall have jurisdiction in equity upon the petition of any member of the bar of this state in good standing or upon its own motion to restrain such violation. Nothing herein contained shall be construed as prohibiting a town clerk from preparing or drawing deeds, mortgages, releases, certificates of change of name and trade name certificates which are to be recorded or filed in the town clerk's office in the town in which such town clerk resides or as prohibiting any person from practicing law or pleading at the bar of any court of this state in his own cause.

Questions Presented

1. Whether §51-88 of the General Statutes of Connecticut is vague so that its application to appellants constitutes denial of due process of law.

2. Whether the terms of the injunction deprive appellants of rights under the First and Fourteenth Amendments.

The Appeal Should Be Dismissed As It Raises No Substantial Federal Question

I.

§51-88 Of The Connecticut General Statutes Is Not Vague So As To Deny Appellants Due Process Of Law Under The Fourteenth Amendment.

Within the context of common usage and judicial interpretation by the courts of Connecticut, as well as the courts of several other states, §51-88 of the Connecticut General Statutes, which prohibits the practice of law by those persons who are not attorneys, is sufficiently clear and conveys adequate warning to men of ordinary intelligence of the area of conduct to be proscribed. Indeed, the common man has a general impression of the major activities involved in the practice of law, *State* v. *Perkins,* 138 Kan. 899, 28 P. 2nd 765 (1934), and certainly one of these major activities is the preparation and the giving of advice with respect to such legal documents as wills and trusts. There is virtually no authority anywhere that has ever concluded that the drafting of these instruments or the giving of advice with respect to their operation is not a legal task constituting the practice of law. Appellants' claim, therefore, that they were unknowingly violating §51-88 when they drafted wills and trusts because §51-88 did not specifically prohibit them from engaging in such activities has no substance whatsoever. The fact is that appellants knew that §51-88 prohibited them from drafting such legal instruments but they continued their illegal activities in blatant disregard of this Connecticut Statute and after continual warnings by the appellee to cease and desist from their illegal activities. For appellants now to attempt to

justify their activities on the ground that they were unaware what §51-88 prohibited is frivolous.

The constitutional requirement of statutory definiteness is violated if a statute fails to give a person of ordinary intelligence fair notice that his contemplated conduct is prohibited. *U. S.* v. *Harriss,* 347 U. S. 612, 617 (1953). If the general class of offenses to which the statute is directed is plainly within its terms, the statute will not be struck down as vague or indefinite. *U. S.* v. *Petrillo,* 332 U. S. 1, 7 (1947). The underlying principle is that conduct which could not be reasonably understood to be proscribed should not be prohibited. To determine whether §51-88 of the Connecticut General Statutes conveys notice of prohibited conduct, this Court must examine the statute in the context of well-defined usage and state court construction. It is appellee's claim that on the basis of both common usage and prior statutory construction by the Connecticut courts, §51-88 adequately meets the standards of definiteness set by this Court.

It is fundamental knowledge that the preparation of wills and trusts and the giving of advice with respect to such documents is essentially a legal task. This is true not only because the preparation of these instruments of such consequence requires a high degree of technical expertise, but especially because documents such as wills and trusts require a broad perspective of the totality of the law. *Clark* v. *Reardon,* 231 Mo. App. 666, 104 S. W. 2nd 407 (1937). It is for this reason that the preparation of these instruments has been considered a task to be performed only by those who by law have sufficiently qualified to give legal advice and perform legal tasks. Certainly, the appellant Dacey, who is a self-proclaimed expert in matters such as

wills and trusts, can hardly deny that these documents establish important legal relationships and that their preparation requires the expertise of a lawyer. The best evidence of this is that appellant Dacey's own booklet (Defs. Ex. 2) advises his own prospective customers to consult a lawyer for the preparation of these documents.[2] It is difficult, in view of this, to accept appellant Dacey's claim at this time that he did not understand §51-88's proscription against practicing law to include the drafting of wills and trusts and the giving of advice with respect to such documents, especially since Dacey had been continually

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[2] Dacey attempted to explain the reason that he did not follow his own advice that his prospective customers should consult an attorney at the Superior Court hearing on May 5, 1964 on appellants' motion to dissolve the temporary injunction:

"The Court: Why don't you send them to an attorney instead of doing it yourself?

The Witness: We did.

The Court: And then what happened?

The Witness: It didn't work out.

The Court: What didn't work out?

The Witness: Sending them to an attorney.

The Court: In what way.

The Witness: Well, people tend to neglect affairs relating to their estate and if we said to a man 'Now you take this to your attorney,' he might agree to do it but just he sometimes doesn't get around to making his will, he doesn't get around to seeing his attorney. Sometimes he did refer it to his attorney and it would be buried on the attorney's desk for many months and by then the client had lost sight of the advantages which we had outlined to him and it would be forgotten . . . Then sometimes an attorney does not believe in trusts at all. We have seen many attorneys who would go so far as to recommend to clients that they discard the beneficiary designation on their life and direct instead that it go into their estate. This made more of an estate for probate purposes and many attorneys seem to dislike trusts because they, a living trust, because they are not involved in probate, and some attorneys don't believe in mutual funds. They don't know about mutual funds generally. They just don't believe in it . . ." (Transcript pp. 121-123, Hearing Before Judge Klau, Superior Court at Bridgeport, May 5, 1964).

warned by the appellee prior to the institution of the action that his activities constituted the unauthorized practice of law.

Moreover, the courts of the State of Connecticut have interpreted §51-88 to prohibit the preparation of legal documents such as wills and trusts and the giving of advice with respect to these documents by those not admitted to the bar. In *State* v. *Thiede,* 4 Conn. Sup. 438, 439 (1937), a lower Connecticut court held that "the drafting of wills has, from time immemorial, been considered an important branch of the practice of law". And in *State Bar Association of Connecticut* v. *Connecticut Bank and Trust Co.,* 145 Conn. 222, 140 A. 2d 863 (1958), the Connecticut Supreme Court, while stating that the basis for judgment in ascertaining whether §51-88 had been violated was to determine whether the acts complained of were commonly understood to be the practice of law, held that the drafting of wills and trusts by trust departments of banks constituted the practice of law within the intendment of §51-88. In the face of such interpretations of §51-88, appellant Dacey can hardly make a good faith argument that he was unaware of the prohibitions of §51-88 when he drafted wills and trusts.

In several other states which have statutes similar to §51-88 which protect the public against the practice of law by non-lawyers, the courts have contributed to the definition of the term. In every instance, the drafting of documents such as wills and trusts and the giving of advice with respect to them has been considered a central feature of the practice of law, e.g., *Darby* v. *Mississippi State Board of Bar Admissions,* 255 Miss. ——, 185 So. 2nd 684, 687 (1966); *People* v. *Schmitt,* 126 Colo. 546, 251 P. 2nd 915 (1952). And while this Court has not as yet had occasion

to pass upon the definiteness of the specific phrase "practice of law" as used in state statutes, no court in any of the more than thirty states which simply prohibit the "practice of law" by those not admitted to the bar has ever considered the statute constitutionally inadequate for lack of definiteness. In fact, several appellate courts have found the statutes sufficiently specific to support penal sanctions against violators.[3] As a matter of fact, in the few states which have elaborated what activities constitute the practice of law,[4] appellant Dacey would have been in clear violation of the statute in each and every state.

No other conclusion can be reached than that §51-88's proscription against the practice of law clearly and unmistakenly encompasses the preparation of wills and trusts, and the giving of advice with respect to the effect and operation of these documents. The best evidence of this fact is the unanimity of all authorities which have ever passed upon the issue. There is no substance, therefore, in appellant Dacey's claim of statutory indefiniteness. Moreover, appellant Dacey's claim is weakened further by the fact that he had adequate warning of the statute's prohibitions but nevertheless deliberately engaged in activities which had already been specifically stipulated as activities constituting the practice of law.

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[3] *Remedies Available to Combat the Unauthorized Practice of Law*, 62 COLUMBIA LAW REVIEW, 501, 503 n. 12.

[4] *Ala. Code* §46-42 (1958); *Ga. Code Ann.* §9-401 (1936); *La. Rev. Stat. Ann.* §37:212 (1951); Mo. Ann. Stat. §484.010 (1949); Minn. Stat. Ann. §481.05 (1966); *N.C. Gen. Stat.* §84-2.1 (1958).

II.

The Terms Of The Injunction Clearly Do Not Encroach Upon Appellants' Right Of Freedom Of Speech Under The First And Fourteenth Amendments.

In the face of the obvious illegal activities of the appellants, which the Connecticut Supreme Court characterized as "sordid", an injunction was issued which in effect enjoined the appellants from preparing and supervising the execution of wills and trusts, giving advice with respect to the legal effect of such instruments and advertising to induce persons to consult with the appellants concerning the preparation, legal effect and operation of such instruments.[5] This injunction was especially necessary because appellant Dacey stated during the Superior Court hearing that he intended to continue with his activities unless restrained by the Court (F. 151, R. 36-37).

The injunction issued by the court below embraces only acts which fall within the prohibition of §51-88. There is,

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[5] The specific injunction enjoined the appellants from:

"(a) Engaging in the drafting and/or preparation of wills, trusts, trust agreements and similar documents and/or advising and counseling any person concerning said documents, the effects thereof and the laws applicable thereto.

"(b) Arranging for and supervision of the execution of wills, trust agreements and similar documents and/or advising and counseling any person concerning the legal effect of execution of said documents and the laws applicable thereto.

"(c) Advertising and/or soliciting in any manner to suggest to or induce any persons to consult said Norman F. Dacey and/or Norman F. Dacey and Associates, Incorporated, their officers, associates, agents or servants, concerning the preparation and/or execution of wills, trusts and trust agreements or similar documents and/or concerning the legal effects thereof and/or the operation and effect of laws applicable thereto."

in fact, probably nothing more central to the attorney's traditional role than drafting, arranging for and supervising the drafting of legal documents such as wills and trusts and advising and counseling clients with respect to the effect of those documents and the laws applicable to them. Yet the appellants contend that merely because these acts also involve some sort of communication, they are protected from injunction by the First and Fourteenth Amendments to the United States Constitution.

Appellants' contention that because an activity which is prohibited by state statute involves the physical act of speech, the activity cannot be prohibited by injunction, was rejected by this Court in *Giboney* v. *Empire Storage and Ice Co.*, 336 U. S. 490 (1949). It is inconceivable that members of the public should not be able to be protected against the appellants in the face of their clear violation of §51-88 merely because the violation involves some element of communication. Indeed the injunction in limited fashion merely restrains the appellants from performing those activities which obviously constitute the practice of law and which the appellants have done in the past and have threatened to do in the future unless prohibited.

To the extent that the injunction prohibits acts which involve no element of communication, the appellants' free speech argument is clearly inapplicable. To the extent that this argument purports to apply to paragraph "c" of the injunction, it was foreclosed by *Valentine* v. *Chrestensen*, 316 U. S. 52 (1942) which holds advertising material to be beyond the protective sphere of the First Amendment.

The injunction issued was especially appropriate because not only do the appellants engage in activities which constitute the practice of law in clear violation of §51-88, but

they practice law in the most reprehensible manner. Without any legal training, they advertise to induce persons to consult them concerning the preparation of legal instruments of great consequence. Even more frightening, however, is that they have a direct financial interest in persuading an individual to prepare a will or trust in the manner that they advocate. In view of this, they can hardly give to their clients the undivided allegiance and faithful attention that the Connecticut Supreme Court has demanded that attorneys give to their clients. *State Bar Association of Connecticut* v. *Connecticut Bank and Trust Co.*, 145 Conn. 222, 140 A. 2d 863 (1958). Furthermore, no supervisory body exists to prohibit the appellants from pursuing this course of conduct which unquestionably involves a conflict of interest. In short, the very reasons for which courts have from the very beginning demanded that wills and trust agreements be prepared by attorneys required the Connecticut courts to enjoin appellants from continuing their illegal and unauthorized activities.

The Supreme Court of Connecticut did nothing more than prohibit the appellants from performing acts that were blatantly illegal. Nothing in the injunction in any manner infringes upon the appellants' right of free speech.

Conclusion

For these reasons, then, the appellee respectfully requests that this Court dismiss appellants' appeal for want of a substantial federal question.

Respectfully submitted,

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March 8, 1967

SUPREME COURT, U.S.
MAR 29 1967
JOHN F. DAVIS, CLERK

IN THE

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No. 1049, October Term, 1966.

NORMAN F. DACEY, ET AL,

Appellants

vs.

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On Appeal From The Supreme Court Of The State Of Connecticut.

APPELLANTS' BRIEF ON MOTION TO DISMISS.

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First Amendment 5

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THE APPEAL RAISES SUBSTANTIAL FEDERAL QUESTIONS.

I.

SECTION 51-88 OF THE GENERAL STATUTES OF CONNECTICUT VIOLATES THE "DUE PROCESS" CLAUSE OF THE FOURTEENTH AMENDMENT.

The issues in this case are nationwide in scope and effect. The appellant, not to mention a multitude of others in fields closely related to law (e.g., real estate, accounting, insurance, etc., to mention a few) are entitled to a clear answer to them.

The genesis of appellee's contention that § 51-88 of the General Statutes of Connecticut does not violate the due process clause is that

> "within the context of common usage and judicial interpretation by the courts of Connecticut . . . § 51-88 of the Connecticut General Statutes . . . is sufficiently clear and conveys adequate warning to men of ordinary intelligence of the area of conduct to be proscribed."[1]

Appellee then states (Motion, page 8) that "this Court must examine the statute in the context of

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[1]Appellee's Motion to Dismiss Under Rule 16 (hereinafter referred to as "Motion") page 7.

well-defined usage and state court construction" to determine whether the statute gives adequate notice of the conduct it seeks to prohibit.

In construing § 51-88 the Supreme Court of Connecticut has held that an all-inclusive definition of the phrase "practice of law" is difficult, if not impossible, of formulation. **Grievance Committee v. Dacey,** 154 Conn. 129, 147; **Grievance Committee v. Payne,** 128 Conn. 325, 329. The attitude of the courts of Connecticut when faced with a case involving the alleged unauthorized practice of law is painfully obvious — they intend to make an **ad hoc** determination of each case. As stated in **Grievance Committee v. Payne, supra** at 329:

> "The more practical approach is to consider each state of facts and determine whether it falls within the fair intendment of the term [practice of law]."

Such an approach may very well be the most practical approach. But the statute under which such an approach has been adopted clearly fails "to inform those who are subject to it what conduct on their part will render them liable to its penalties." **Lanzetta v. New Jersey,** 306 U.S. 451, 453; **Connally v. General Construction Co.,** 269 U.S. 385, 391.

Such an **ad hoc** approach is further proof of the fact that the Connecticut courts themselves do not know the scope or breadth of § 51-88. Thus how can the courts expect mere "men of ordinary intelligence" to know what conduct § 51-88 prohibits when

the courts themselves lack this knowledge in advance of its specific application.

Appellee argues that under any construction of § 51-88 appellant clearly and knowingly violated the statute. Appellant, both before the Superior Court and the Supreme Court of Connecticut, argued that for out-of-court conduct to violate the statute, such conduct must be carried on as a "business." **Grievance Committee v. Dacey**, 154 Conn. 129, 136. The Connecticut Supreme Court itself admitted that on its face, and on the face of § 51-88, such a claim "seemed to have some merit." **Ibid.** The Court examined at great length the entire legislative history of what is now § 51-88 (**Id.** at 136-140) before ultimately concluding that the mere "practice of law" violated the statute, even though not carried on as a business. **Id.** at 140.[2]

How appellee can here contend that appellant's conduct "clearly violated § 51-88" and that appellant knew that his conduct violated the statute, when the Court had to go to great lengh before ulimately reaching this conclusion is beyond comprehension. Or would appellee contend that appellant has a greater insight into the meaning of § 51-88 than does the highest court in Connecticut?

Appellee further argues that since it gave appel-

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[2]The Court stated, at page 140:

> "Whether he [appellant Dacey] also could be said to have made it a 'business to practice law' need not, on the facts of this case, be determined."

lant "warning" that his conduct violated § 51-88, appellant had notice that his conduct was illegal. However, who, we might ask, ever appointed appellee as interpreter of the phrase "practice of law"? Appellee loses sight of the fact that it is the statute itself which must warn appellant of what conduct on his part will render him liable to its penalties, not a warning given to him by the grievance committee, even assuming any "warning" was given by anyone, a fact of which there is no evidence and which appellant seriously disputes. And this warning the statute fails to give.

The issue is not whether or not appellant's activities might be considered to be the "practice of law" under a more explicit statute. The issue is whether or not appellant and persons similarly situated in any one of the fields of endeavor closely related to the law, are entitled to know in advance what conduct on their part will render them liable to penalties imposed under the statute. And if they are so entitled to know, does § 51-88 so advise them.

It is these questions which, appellant submits, are federally substantial and which should be ruled upon by the Court.

II.

THE SCOPE OF THE INJUNCTION ABRIDGES APPELLANT'S RIGHT OF FREE SPEECH.

Th main thrust of appellee's argument relative to this issue is stated on page 12 of its Motion to Dismiss:

"The injunction issued by the court below embraces only acts which fall within the prohibition of § 51-88."

If the limits of the injunction are the limits of § 51-88, then the injunction is of even greater breadth than appellant imagined. For it would then have no bounds and would be as defective as the statute itself.

The issue is whether or not the injunction is so vague that its scope could extend to activities which are protected under the First Amendment. Appellant has never claimed that merely becasue an activity involves an act of speech it is protected by the First Amendment. Appellant does argue that an injunction which prohibits him from lecturing over radio or television or in person, which prohibits him from writing books or from conducting forums, does violate the First Amendment.

It is submitted that the potential scope of the injunction could easily be extended this far. Whether the injunction is in fact this broad is not of prime importance. What is of prime importance is the fact that appellant, because of the vagueness and potential scope of the injunction is faced with the dilemma of either remaining silent or speaking at his peril.

Merely because this case involves the unauthorized practice of law, does the court have the right to effectively silence a person by issuing a vague and overbroad injunction? Appellant submits that the court does not have this right.

III.

CONCLUSION.

Appellant submits that this appeal raises substantial federal questions both as to the constitutionality of § 51-88 of the General Statutes of Connecticut and as to the scope of the injunction, issues which have not been passed upon previously by any court. They have a far-reaching effect on many persons in occupations and professions which are closely related to the law. They are questions the answers to which appellant is entitled.

Respectfully Submitted,

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March 27, 1967.

SUPREME COURT, U. S.

FILED

MAY 12 1967

JOHN F. DAVIS, CLERK

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On Appeal From The Supreme Court Of The State Of Connecticut.

I.

PETITION FOR REHEARING.

Appellants present their petition for a rehearing of the above entitled cause, and, in support thereof, respectfully show:

II.

GROUNDS FOR REHEARING.

The main thrust of appellee's motion to dismiss is

that appellants' activities clearly fall within the ambit of § 51-88 of the General Statutes of Connecticut and therefore appellants cannot complain either that they were unaware that their conduct was prohibited or that their rights were violated.

The factual situation involved in the instant case has not heretofore been considered by the Supreme Court of Connecticut. In fact, only two cases involving the unauthorized practice of law have been considered by the Supreme Court of Connecticut. **Grievance Committee v. Payne,** 128 Conn. 325 raised the question of whether the preparation and delivery of certificates of title by a town clerk who was not an attorney constituted the unauthorized practice of law. And **State Bar Association v. Connecticut Bank & Trust Co.,** 145 Conn. 222, and 146 Conn. 556 involved the question of whether the activities of the trust department of a bank constituted the unauthorized practice of law.

Both the **Payne** and the **Connecticut Bank** cases involved factual situations which differed materially from the appellants' activities. Whether the appellants, in supplying form wills and trusts, were "practicing law" has never been considered in Connecticut. Consequently, for appellee to argue or the Court to hold that appellants' activities **clearly** violate the statute is unrealistic. Forms of legal documents are sold in many stationery stores throughout the country. Yet it has not been contended that the owners of these stores are practicing law simply because they sell these forms.

To sustain summarily the action of the Connecticut

Supreme Court would be to encourage Connecticut to make **ad hoc** determinations in all so-called "unauthorized practice of law" cases, a determination which the Court can make without any legally fixed preexistent standard. See **Giaccio v. Pennsylvania,** 382 U.S. 399, 403. Yet this unfettered power in the Court is precisely what the 14th Amendment seeks to prohibit.

Whether the same difficulties would exist had the Connecticut Supreme Court attempted to define, in prior cases, the phrase "practice of law" is not in issue, for the Court has made no such attempt. It has stated that:

> "The mere fact that some activities might be engaged in which would be so close to the border line that informed members of the bar might differ as to whether they did or did not constitute the practice of law is of no assistance to this defendant. There is nothing to indicate that the particular legal activities which are involved in this case are of such a character that they are not clearly embraced in the phrase "practice of law". Consequently, the statute is not unconstitutionally ambiguous in its impact on the defendant. **Hardware Mutual Casualty Co. v. Premo,** supra, 471. His three basic activities which are adversely affected by the statute, and by the judgment, are and always have been commonly understood to be the practice of law. The claim of unconstitutionality for vagueness is, as to this defendant without merit."

Grievance Committee v. Dacey, et al, 154 Conn. 129,

147-48. However, what of the other activities other than appellants' alleged "three basic activities"? Are these, too, prohibited by the statute? This question the Court certainly has left unanswered. It has left appellants in the same position now as they were in prior to the commencement of the instant proceedings in the Superior Court — threatened with criminal prosecution under Sec. 51-88 of the Connecticut statutes, the scope, breadth and meaning of which appellants and the Court can only guess.

The position in which appellants are placed is identical to that in which the appellants in **Connally v. General Construction Co.** 269 U.S. 385 were placed. Appellants know not what course of conduct they may pursue. They may act, but only upon threat of criminal sanctions and contempt of Court.

There can be no doubt that any penal statute must be sufficiently clear and explicit to inform those subject to it what conduct will render them liable to its penalties. However, where the statute is one involving the unauthorized practice of law, there is an especial obligation on both the bar and the bench to see that the statute clearly apprises a layman of what activities he might perform and what activities are exclusively within the province of an attorney. Section 51-88 clearly and admittedly fails to satisfy this standard.

CONCLUSION.

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and

that, upon further consideration, the judgment of the Supreme Court of the State of Connecticut be reversed.

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CERTIFICATE OF COUNSEL.

I, George A. Saden, Counsel for the above-named appellants, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

GEORGE A. SADEN,
Counsel for Appellants.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

DACEY ET AL. *v.* GRIEVANCE COMMITTEE OF BAR OF FAIRFIELD COUNTY.

APPEAL FROM THE SUPREME COURT OF CONNECTICUT.

No. 1049. Decided April 17, 1967.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question.